

THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Investigation of Merrimack Station Scrubber Project and Cost Recovery

Docket No. DE 11-250

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

Pursuant to Puc 203.07(e), Public Service Company of New Hampshire ("PSNH" or the "Company") hereby objects to the Motion to Compel Response to Technical Session Data Request Q-TECH-008 filed by the Conservation Law Foundation, Inc. ("CLF"). The Commission should deny CLF's Motion because it is untimely and because it seeks information that is not relevant to the consideration of temporary rates in this docket. In support of this Objection, PSNH states as follows:

1. On December 23, 2011, the Commission issued a Secretarial Letter establishing a procedural schedule for the temporary rate phase of this docket. In that letter, the Commission set a schedule which called for "Data Requests re Temporary Rates" to be served on the Company by December 30, 2011. That Secretarial Letter also stated that "...for the phase of this docket dealing with temporary rates, the Commission has shortened the time for motions to compel responses to data requests to five business days from receipt of responses or objections. *See* N.H. Code of Admin. R. Puc 203.09." CLF's Motion to Compel should be denied because it

was filed on February 10, 2012, ten days after PSNH filed its response to Q-TECH-008<sup>1</sup>, and thus was not within the five day time frame established by the Commission. On this basis alone, CLF's motion should be denied.

2. While the Commission need not reach the substance of CLF's Motion, even if the Commission were to consider CLF's arguments, they are without merit. By way of background, the Secretarial Letter established an abbreviated schedule for the consideration of temporary rates in this docket. The schedule provided for one set of data requests regarding temporary rates, with responses due on January 13, 2012 and a technical session to follow on January 23, 2012. The Company received 83 discovery requests, to which it objected in part on January 9 and responded on January 13. The Company reached an agreement with OCA, TransCanada, Sierra Club and CLF that to the extent it had objected to their data requests on the basis that any request sought information not relevant to the consideration of temporary rates, the Company would not object to the re-asking of the request during the later phase of the docket. No motions to compel were filed by any of the parties.

3. At the technical session, nine follow up questions were asked. The Company noted those questions and agreed with the Staff and parties that its responses would be due January 31, 2012. The Company noted Technical Session Data Request 8 as follows: "Re: OCA 1-01, Q-OCA-2: Please provide agreements with municipal wastewater treatment facilities." On January 25, 2012, the Company's counsel received an email from the Office of Consumer Advocate, which is included here as Attachment B, and states in part "As we discussed at the technical session on Monday, we believe that included in the response [to Q-TECH-008] should be a) information related to the pending NPDES permit for the scrubber wastewater, and b) any

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<sup>1</sup> PSNH responded to Q-TECH-008 on January 31, 2012. See January 31, 2012 email attached to this Objection as Attachment A.

information related to permits, approvals or contracts that the Company has received or entered into for the purpose of disposing of scrubber wastewater.” Based on this clarification, the Company responded to Q-TECH-008 (which was a follow-up to OCA 1-2) as follows:

Response: 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.

4. After the Company responded to Q-TECH-008, CLF sent an email asking the Company to provide significantly more information in response to the question (*see* Attachment B to CLF Motion) stating that the Company misunderstood or changed the question and as a result must produce “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. Without limitation, a [sic] the 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.”

5. The Company responded to CLF’s email inquiry (which CLF failed to attach to its Motion but is included here as Attachment C), informing CLF that the Company answered the technical session question it had understood was asked and as clarified by OCA. OCA has not

filed a motion to compel regarding the Company's response to OCA's initial request – OCA 1-2 – or to Q-TECH-008, which the Company understood was a follow-up to OCA's initial question.

6. Through its Motion to Compel, CLF seeks to convert the technical session data request into a restatement of CLF's Interrogatory #11, which requested in part: “[a]t page 4, with regard to discharges associated with operation of the Scrubber Project, please describe all options considered by You as “various alternative solution paths to ensure timely operation of the Scrubber” and provide copies of all documents used or prepared by You in assessing such options including, without limitation, applications to and approvals from permitted wastewater treatment facilities; Please provide a log and/or listing of all wastewater shipments sent to such permitted wastewater treatment facilities copies of all records relating to such shipments.” A copy of CLF's Interrogatory #11 and the Company's objection is provided as Attachment D.

7. CLF now moves to compel a response to a question which it asked on December 30, 2011 and to which the Company objected on January 9, 2012. CLF failed to file a motion to compel regarding either CLF Interrogatory 1-11 or CLF Request for Production 1-20 (referenced in response to Q-TECH-008), yet now seeks to modify a technical session request to effectively restate a question it has already asked. The Commission should deny CLF's motion because it is late –with regard to Q-TECH-008 (which was answered on January 31, 2012), and as to CLF Interrogatory 1-11 and CLF Request for Production 1-20 (both of which were objected to on January 9, 2012). In the case of all three questions, CLF did not move to compel within the required five days. Thus, CLF's motion should be denied.

8. Moreover, as the Company has informed CLF repeatedly, detailed information of the sort demanded by it in its Motion, such as “transit arrangements, bills of lading, manifests, invoices and receipts....” is not relevant to a determination of temporary rates. Under RSA

378:27, the Commission must “immediately fix, determine and prescribe” temporary rates if the public interest so requires. The New Hampshire Supreme Court has held that the standard for temporary rates “...is ‘less stringent’ than the standard for permanent rates, in that temporary rates shall be determined expeditiously, ‘without such investigation as might be deemed necessary to a determination of permanent rates.’ *See New Eng. Tel. & Tel. Co. v. State*, 95 N.H. 515, 518, 68 A.2d 114, 116 (1949).” *Appeal of Office of Consumer Advocate*, 134 N.H. 651, 661 (1991).

9. CLF argues that the Company’s response to Q-TECH-008 “was incomplete and not responsive” because the parties must be able to ascertain “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.” CLF Motion at 4-5. More specifically, CLF seeks to have the Commission order the Company to produce “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.” *Id.* at 5-6.

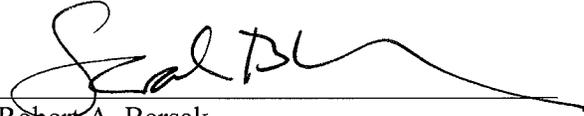
10. Under CLF’s reasoning, there would have to be extensive discovery and confirmation of all of the details behind every cost associated with the scrubber’s construction and operation before the Commission could approve temporary rates to take effect. That would be in direct contravention to the statute and the common law, which requires not only a less stringent examination prior to implementing temporary rates, but also an expedient determination of the temporary rate level. *See id.* An expedient determination of a temporary rate level could not occur if the Commission allowed the scope of discovery CLF seeks.

11. CLF also claims that its motion should be granted because 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...” CLF Motion at 5. It is important to note that the Company has already provided this information in a response to a Staff data request – *see* PSNH response to Q-STAFF-002 - which is included here as Attachment E. That response unambiguously states that the Company has all permits necessary to place the scrubber in service and explains in detail how the Company is handling scrubber wastewater. The Commission should deny CLF’s invitation to turn this temporary rate review into a prudence review regarding disposal methods for wastewater - - a subject that may be within the purview of the Department of Environmental Services, but which is well-beyond the jurisdiction of this Commission.

12. For all of the reasons stated above, PSNH requests that the Commission deny CLF’s Motion to Compel.

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

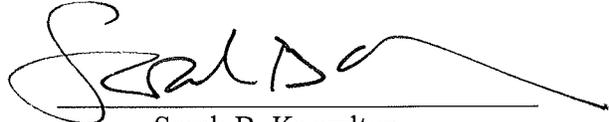
Dated: February 17, 2012

By:   
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Public Service Company of New Hampshire  
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603-634-2326  
[sarah.knowlton@nu.com](mailto:sarah.knowlton@nu.com)

**Certificate of Service**

I hereby certify that a copy of this Objection to CLF's Motion to Compel Response to Q-TECH-008 has been served electronically on the persons on the Commission's service list in accordance with Puc 203.11 this 17<sup>th</sup> day of February, 2012.

  
Sarah B. Knowlton

# ATTACHMENT A

From: Kristi Davie/NUS  
To: [Discovery@puc.nh.gov](mailto:Discovery@puc.nh.gov), [amanda.noonan@puc.nh.gov](mailto:amanda.noonan@puc.nh.gov), [bersara@psnh.com](mailto:bersara@psnh.com), [Christina.Martin@oca.nh.gov](mailto:Christina.Martin@oca.nh.gov), [dhartford@clf.org](mailto:dhartford@clf.org),  
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[zachary.fabish@sierraclub.org](mailto:zachary.fabish@sierraclub.org)  
Date: 01/31/2012 03:10 PM  
Subject: DE 11-250 PSNH Responses to Technical Session TS-01

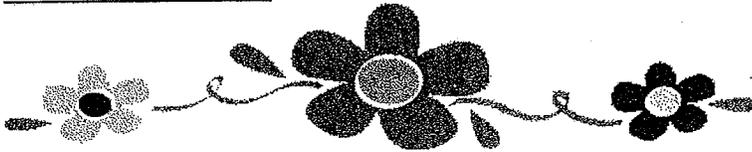
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Attached please find Public Service Company of New Hampshire's Responses to Technical Session TS-01 Q-004, Q-006, Q-008 and Q009.

Hard copies will not follow unless requested.

Thanks,

Kristi L. Davie  
Rate & Regulatory  
PSNH - Energy Park  
(603) 634-3303/(603) 634-2449 fax  
[daviekl@nu.com](mailto:daviekl@nu.com)



\*\*\*\*\*  
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**2 attachments**

-  **1-31-12 PSNH Cvr Letter to Amidon TS-01.pdf**  
22K
  -  **DE 11-250 PSNH Responses to TS-01 1-31-12.pdf**  
2265K
-

# ATTACHMENT B



**DE 11-250 TS Follow up to OCA 1-2**

From: Hatfield, Meredith  
To: Sarah B. Knowlton, Robert A. Bersak  
Cc: "Hollenberg, Rorie"

01/25/2012 04:45 PM

Sarah & Bob:

I am writing in order to be clear about what the OCA seeks as a follow up to OCA 1-2, which we discussed on Monday.

Please provide a complete response to OCA 1-2, which requested that the Company "Please identify and provide the status of 'all necessary permits and approvals.'"

As we discussed at the technical session on Monday, we believe that included in the response should be a) information related to the pending NPDES permit for the scrubber wastewater, and b) any information related to permits, approvals or contracts that the Company has received or entered into for the purpose of disposing of scrubber wastewater.

Please let me know if you have any questions.

Thanks,  
Meredith

Meredith A. Hatfield  
Office of Consumer Advocate  
21 S. Fruit Street  
Concord, NH 03301  
603-271-1174  
[meredith.a.hatfield@oca.nh.gov](mailto:meredith.a.hatfield@oca.nh.gov)

**Statement of Confidentiality**

The information contained in this electronic message and any attachments to this message may contain confidential or privileged information and are intended for the exclusive use of the intended recipient(s). Please notify the sender immediately at (603) 271-1172 or [meredith.a.hatfield@oca.nh.gov](mailto:meredith.a.hatfield@oca.nh.gov) if you are not the intended recipient, and destroy all copies of this electronic message and any attachments.

Thank you.

# ATTACHMENT C



**RE: DE 11-250 PSNH Data Request Responses and Objections** 

From: Sarah B. Knowlton <LEGAL > <720-2326 >

01/17/2012 09:29 AM

To: NJonathan Peress

Cc: bersara, Zachary Fabish

Jonathan,

My understanding is that the Staff responses bounced back due to constraints associated with your computer system. We did not receive bounce backs from any other recipients when the responses were served. If your system is only able to receive files up to a certain size, please let me know and in the future, we will mail you a CD of the responses when they are served. We are agreeable to extending the deadline for any motion to compel Sierra Club/CLF seeks to file to January 20.

Regarding your remaining questions, we will evaluate the relevance of any discovery requests made during the permanent phase in the proceeding at that time. Your questions below seek information and processes beyond the scope of the temporary rate phase of this case and thus it is premature to engage in a debate of them now. As to the mercury baseline matters, we have pointed to information regarding those matters in our responses but do not believe that information is relevant to a consideration of temporary rates. If you seek further information about those pending matters which are under the purview of DES, you are free to go review the files at that agency.

Sarah

Sarah B. Knowlton  
Senior Counsel  
Public Service Company of New Hampshire  
780 No. Commercial Street  
Manchester, NH 03101  
(603) 634-2326 - telephone  
(603) 634-2438 - facsimile

NJonathan Peress Sarah, Thanks to the email below, we have now...

01/16/2012 04:33:12 PM

From: NJonathan Peress <NJPeress@clf.org>  
To: Sarah B. Knowlton/NUS@NU  
Cc: Kristi Davie/NUS@NU, Zachary Fabish <zachary.fabish@sierraclub.org>  
Date: 01/16/2012 04:33 PM  
Subject: RE: DE 11-250 PSNH Data Request Responses and Objections

Sarah, Thanks to the email below, we have now received PSNH's response to CLF and Sierra Club's first set of data requests. In this regard, I note that PSNH's responses to CLF-SC-01, Interrogatories 008 and 010 refer to and rely on responses to Staff-01 which we only received as of this morning, which is a holiday. We will only begin reviewing those responses tomorrow. A motion to compel, however, is due tomorrow should we need to file one. By this email, we are requesting PSNH's concurrence to an extension of time, until Friday January 20, for CLF and SC to file a joint motion to compel should such a motion be necessary and in the hopes of resolving any discovery disagreements between us. Prior to determining whether we need to file such a motion, we are providing several follow up questions in an attempt to resolve any differences between us informally and in accordance with Puc 203.09(i)(4):

- 1) Many of PSNH's objections are based on the assertion that the request is not "relevant to a consideration of temporary rates." While we recognize that the initial phase of the docket is addressing PSNH's request for temporary rates with respect to the scrubber project, the docket and thus discovery is not limited only to such request and includes reconciling costs and the prudence of such costs. Please confirm that PSNH will not object to data requests seeking such information relating to the permanent rate aspects of this docket.
- 2) For all the requests PSNH objects to as overly broad and/or unduly burdensome, do those objections stem from PSNH's contention that the requested materials seek evidence "not relevant to a consideration of temporary rates"? If not, please clarify PSNH's objections to indicate what subset of materials you intend to produce.
- 3) With respect to Interrogatory 010, is PSNH willing to provide us with the documents PSNH is using in support of its position regarding baseline mercury emissions and baseline mercury input?
- 4) With respect to Interrogatory 003, does PSNH have monitoring data or other data for particulate matter emissions which you claim to be a surrogate providing an indication as to the quantity of non-mercury metals and an estimate of the quantity of any such emission reductions; likewise, does PSNH have monitoring data for SO<sub>2</sub> or HCL as an indicator for the concentration of acid gases and an estimate of the quantity of any such emission reductions? Are you willing to provide us with copies of or access to all relevant documents?
- 5) With respect to Interrogatory 004, we understand that PSNH is trucking treated liquid effluent to municipal wastewater treatment facilities for disposal. Is PSNH willing to provide us with copies of all relevant correspondence for such disposal including as it relates to regulatory compliance, permitting, cost and the quantity of such shipments?
- 6) With respect to Interrogatory 008 and Requests for Production 002 and 0015, is PSNH willing to set up a data room for us to review all documents relating to the elements and components of the scrubber project for which cost recovery is being sought, engineering and construction leading to them being placed into service, and the payments / cost for such elements and components?
- 7) For materials that you claim are "available to the requestor," is it your position that CLF and the Sierra Club must seek those materials outside this proceeding despite your obligation under the discovery rules to produce materials in your possession, custody or control here?

Please note that we are not considering the questions above as limiting the scope of our entitlement to complete responses to our data requests or limiting our ability to seek follow up information; nor should they be interpreted as any indication of the validity of PSNH's objections. Also, please note that I have not had the opportunity to fully discuss the specifics of this email with counsel for Sierra Club due to the holiday and the fact that we only received some of PSNH's responsive material today. It may be helpful for the three of us to discuss this matter early in the business day tomorrow. Thank you for your consideration and courtesies. Sincerely, Jonathan 603 225-3060

**N. Jonathan Peress**

Vice President

Director, Clean Energy and Climate Change Program  
Conservation Law Foundation

27 North Main Street  
Concord, NH 03301

**P:** 603-225-3060

**C:** 603-443-2719

**E:** [njperess@clf.org](mailto:njperess@clf.org)

For a thriving New England



**From:** [daviekl@nu.com](mailto:daviekl@nu.com) [mailto:[daviekl@nu.com](mailto:daviekl@nu.com)]

**Sent:** Monday, January 16, 2012 7:24 AM

**To:** NJonathan Peress

**Subject:** DE 11-250 STAFF-01 Responses

Mr. Peress,

I haven't received the second email back yet as undeliverable, so not sure why you haven't received it. But let's try again!

To date, I believe you have received the cover letter and part 2. So you need the part 1 (Questions 1-11)

Thanks,

Kristi L. Davie

Rate & Regulatory

PSNH - Energy Park

(603) 634-3303/(603) 634-2449 fax

[daviekl@nu.com](mailto:daviekl@nu.com)

# ATTACHMENT D

Witness:                    No Witness  
Request from:            Conservation Law Foundation

**Question:**

Regarding the Progress Report, dated November 10, 2011 (Docket DE 08-103): a. At page 2, please list the 60 purchase orders and contracts issued for equipment, supplies, or services needed to Complete the Project including date, amount, vendor and purpose; and provide copies of each such purchase order and/or contract; b. At page 2, please list the "punchlist tasks" and "construction and testing and tuning activities" remaining to be completed at that time and provide copies of all documents supporting that list ; c. At page 2, please provide a copy of the state permit application for the quench water pump diesel engine and the local permit applications for the limestone truck delivery area foundation and booster fan enclosure electrical permit; d. At page 4, with regard to discharges associated with operation of the Scrubber Project, please describe all options considered by You as "various alternative solution paths to ensure timely operation of the Scrubber" and provide copies of all documents used or prepared by You in assessing such options including , without limitation, applications to and approvals from permitted wastewater treatment facilities ; Please provide a log and/or listing of all wastewater shipments sent to such permitted wastewater treatment facilities copies of all records relating to such shipments.

**Response:**

Objection: PSNH objects to the request on the basis that it is not reasonably calculated to lead to the discovery of information that would be admissible in this phase of the proceeding which relates only to the consideration of temporary rates for the costs of construction and operation of the Scrubber . *See* Secretarial Letter dated December 23, 2011. An evaluation of PSNH's request for temporary rates is based on PSNH's records on file with the Commission , *see RSA 378:27; Appeal of Office of Consumer Advocate*, 134 N.H. 651, 659 (1991). "The standard for establishing temporary rates is contained in RSA 378:27...This standard is 'less stringent' than the standard for permanent rates, in that temporary rates shall be determined expeditiously, 'without such investigation as might be deemed necessary to a determination of permanent rates.' *See New Eng. Tel. & Tel. Co. v. State*, 95 N.H. 515, 518, 68 A.2d 114, 116 (1949)." *Office of Consumer Advocate* at 660. "In a temporary rate case, 'we are entitled to assume that what is a reasonable rate was determined from [company reports], in the absence of evidence to the contrary.' *Public Service Co. v. State*, 102 N.H. 66, 70, 150 A.2d 810, 813 (1959)." *Id.* at 661. "The reports of the utility filed with the commission" (RSA 378:27) do not include a listing of each payment made associated with the Scrubber's construction, but rather aggregated cost information. The costs associated with the Scrubber's construction and operation will be audited during the permanent phase of this proceeding, and thus it is premature to consider such information during the temporary rate phase . In addition, construction punchlists, state permit applications and any options regarding water discharge are not relevant to the consideration of temporary rates. PSNH further objects on the basis that the request is overly broad and unduly burdensome, and seeks information equally available to the requestor .

# ATTACHMENT E

**Public Service Company of New  
Hampshire  
Docket No. DE 11-250**

**Data Request STAFF-01**

**Dated: 12/30/2011**

**Q-STAFF-002**

**Page 1 of 1**

**Witness: William H. Smagula, Robert A. Baumann**  
**Request from: New Hampshire Public Utilities Commission Staff**

**Question:**

Please explain the status of all necessary permits and approvals required to operate any part of the wastewater treatment system that is now being used and/or to be used in conjunction with the Scrubber. If any necessary permits and approvals have not been obtained and the wastewater treatment system is not operating as designed, does that fact affect the operation of the emissions reductions capability of the scrubber? Please explain.

**Response:**

PSNH has all permits necessary to place the Clean Air Project in service and reduce emissions as mandated by the mercury reduction law. As noted in response to Q-STAFF-001, EPA chose to address the new scrubber effluent discharge as part of the overall Merrimack Station NPDES permitting process, rather than entertaining a more timely permit modification or any other type of interim discharge authorization. Because finalization of the NPDES permit is expected to be a lengthy process, PSNH is presently precluded from discharging treated scrubber wastewater to an on-site treatment pond and ultimately to the Merrimack River. The primary wastewater treatment system is currently operating as designed, allowing treated wastewater to be brought to permitted waste treatment facilities for disposal. To process wastewater effluent going forward, additional treatment equipment is being installed to reduce the quantity of any wastewater significantly resulting in additional disposal options including one that does not need to discharge.