

**STATE OF NEW HAMPSHIRE**  
**before the**  
**PUBLIC UTILITIES COMMISSION**

Docket No. DE 11-250

**Public Service Company of New Hampshire**

**Investigation of Merrimack Station Scrubber Project and Cost Recovery**

**MOTION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**  
**TO RESCIND THE INTERVENOR STATUS OF THE CONSERVATION LAW**  
**FOUNDATION OR ALTERNATIVELY, TO STRIKE CERTAIN OBJECTIONS FILED**  
**BY THE CONSERVATION LAW FOUNDATION TO PSNH'S DATA REQUESTS**  
**AND COMPEL ANSWERS TO THOSE REQUESTS**

Pursuant to RSA 541-A:32 and Rule Puc 203.07, Public Service Company of New Hampshire ("PSNH") hereby moves to rescind the intervenor status of the Conservation Law Foundation, Inc. ("CLF") or alternatively, to strike certain objections of CLF to PSNH's data requests, and compel further answers.<sup>1</sup>

CLF's objections and "responses" to PSNH's data requests are facially defective. They violate a direct edict of the Commission, the Commission's rules, the Commission's precedent, and well-settled case law. Although CLF has made a minimal, token effort to answer a few requests, taken as a whole, its objections are so deficient that they cannot possibly have been made in good faith because there is no logical connection between the "rubber stamp" objections and the question asked. Rather than make any good faith effort to answer the requests, CLF simply repeats its objections over and over, apparently hoping that mere repetition will present the guise of specific responses. This conduct has been described by courts as the "paradigm of discovery abuse." *Pegoraro v. Marrero*, 281 F.R.D. 122, 128 (S.D.N.Y. 2012) (quoting *Jacoby*

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<sup>1</sup> PSNH made a good-faith effort to resolve the dispute informally as required by Rule Puc 203.09(i)(4).

*v. Hartford Life & Accident Ins. Co.*, 254 F.R.D. 477, 478 (S.D.N.Y.2009). This Commission need not, and should not, countenance such discovery abuse and egregious conduct. CLF's conduct is delaying this proceeding and impairing its orderly conduct. As a result, CLF's discretionary intervenor status should be rescinded. Alternatively, its objections should be stricken and it should be compelled to provide full and complete responses to all of PSNH's data requests.

This motion is a companion to PSNH's Motion to Rescind the intervenor status of TransCanada or, in the alternative, to strike TransCanada's objections to PSNH's data requests and compel further answers. CLF's conduct with respect to discovery mirrors that of TransCanada. As shown below, CLF joined TransCanada in seeking relief from being required to answer PSNH's discovery requests and CLF's objections and failures to answer parallel those of TransCanada. Accordingly, rather than repeat the arguments made in its Motion to Rescind, Strike or Compel with respect to TransCanada ("PSNH-TC Motion"), PSNH refers the Commission to the legal arguments in that Motion and incorporates them by reference. Where appropriate, PSNH will make reference to the relevant portions of that Motion.

### **Background to This Motion**

On December 8, 2011, CLF moved to intervene in this proceeding. As justification for that intervention, CLF contended that its "participation will rely, in part, on its extensive experience with air pollution control regulation and in addressing air pollution emissions from power plants in New Hampshire and throughout New England," and that its "institutional expertise in these matters will inform its participation and benefit the investigation." CLF Motion to Intervene at 2. CLF further asserted that "[a]llowing CLF to intervene will not impair the orderly and prompt conduct of the proceedings." *Id.* at 3. The Commission granted CLF's motion on a discretionary basis, finding that CLF "ha[s] not demonstrated affected rights, duties, or privileges that mandate

[its] intervention.” Secretarial Letter of December 23, 2011; Order No. 25,346 dated April 10, 2012, at 2-3.

Following the submission of pre-filed testimony by CLF and others on December 23, 2013, PSNH propounded data requests on CLF and other intervenors on January 16, 2013 (five days in advance of the deadline set in the December 30, 2014 Secretarial Letter). PSNH’s data requests are included with CLF’s Objections and Responses and are attached hereto as Attachment A. On January 27, 2014, CLF filed an Objection to those requests and a motion to require PSNH to reduce the number of questions it had submitted, complaining that there were just too many questions to answer.

CLF’s Motion was nearly identical to motions filed by the Office of Consumer Advocate (“OCA”) and TransCanada. CLF agreed with and adopted the legal analysis set forth by TransCanada and joined in TransCanada’s contention that this Commission should look to the New Hampshire Superior Court rules concerning discovery in limiting the number of questions asked or in considering objections to PSNH’s requests. In particular, TransCanada cited to Superior Court Rule 23, which creates a presumptive limit of 25 interrogatories,<sup>2</sup> and requested that the Commission waive Rule 203.09(d), which requires an individual objection to each individual data request. CLF also contended that rather than it spending time to answer the data requests, the Commission should use its resources to sort out its objections. CLF Motion of January 27<sup>th</sup> at 2. More specifically, CLF stated that it agreed with TransCanada that:

many of the data requests are over broad, unduly burdensome and not reasonably calculated to lead to admissible evidence; that many attempt to shift the focus away from a prudence review and have no prospect of aiding the Commission in its determination of that issue; that some requests are tantamount to requests for admissions or seek work product/legal analysis of counsel; that other requests are

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<sup>2</sup> TransCanada and CLF ignored the remainder of the Superior Court’s discovery rules which provide for unlimited requests for production of documents, unlimited requests for admissions, and liberal use of depositions.

unnecessarily argumentative; and that much of the information is in the public domain or readily available to PSNH if not already in its possession.

*Id.* For virtually every data request, CLF stated that “CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.” CLF Objections, January 27, 2014, attached hereto as Attachment B.

On January 31, 2014, by Secretarial Letter (the “1/31 Letter”), the Commission rejected the requests of TransCanada, OCA and CLF, specifically referencing the “lack of specificity” in the motions, and ordered TransCanada and the others “to file objections to specific data requests in accordance with the discovery rules” by February 7<sup>th</sup>. In response to the 1/31 Letter, the OCA provided substantive answers to the majority of PSNH’s data requests on February 7<sup>th</sup>. Thus, within a week, OCA was able to assemble meaningful answers, notwithstanding its remaining objections.

By contrast, CLF, once again following the pattern set in the original motions in which it joined TransCanada, responded to the 1/31 Letter by defying it. On February 13, CLF filed “Responses” which either ignore, or violate the order in the 1/31 Letter. Although CLF provided a few adequate answers to the data requests, rather than providing specific objections that bear some reasonable relation to the request objected to, CLF *expanded* its objections and simply repeated them for nearly every request.<sup>3</sup> For example, PSNH propounded 104 data requests. CLF objected to 81 of those requests (nearly 80 percent of all responses) by stating that the request was “overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.” Furthermore, CLF contends that PSNH may only ask questions of its witness, Elizabeth Stanton, who is not a CLF employee, and thus that PSNH has no right to inquire about

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<sup>3</sup> Since the Commission’s 1/31 Letter required that objections be submitted by February 7<sup>th</sup>, CLF’s expanded objections are untimely. Moreover, since the Commission rejected CLF’s request that it limit the number of questions to 50 in accordance with Rule 36 of the Rules of Civil Procedure (see footnote 4 below), CLF’s continued objections on that basis are made in defiance of the 1/31 Letter and are in bad faith.

CLF's knowledge, experience, bias or credibility, notwithstanding CLF's representation to this Commission that its institutional expertise in these matters will . . . benefit the investigation. Finally, despite the Commission's 1/31 Letter making clear that CLF's attempt to limit questions to the presumptive limits of the Superior Court rules was denied, CLF persists in making the following general objection, which it repeats for every request to it (and in many cases to its witness):

CLF objects to the data requests overall on the basis that the number and breadth of the requests far exceeds the total number of questions generally permitted during discovery, is unduly burdensome, and is not reasonably calculated to lead to admissible evidence. Also, many of the questions ask for information readily available in the public domain via the internet. The NH Rules of Civil Procedure, for example, limit the total number of interrogatories to 50, with each question counted separately whether subsidiary, incidental to or dependent on another question. NH R. Civ. P. 36.<sup>4</sup>

In short, CLF simply repeated the arguments in its earlier motion, which the Commission has denied.<sup>5</sup> It thus persists in making general objections that bear no relationship to the question asked, that do not explain *why* the specific question is objectionable, *why* the objection has merit, or *what* information CLF contends may be withheld based on the objection. PSNH-TC Motion at 7-8.

CLF's actions are so abusive as to warrant rescission of its discretionary intervention status. First, CLF's assertion that it may not be asked any questions essentially amounts to a claim that it is immune from any discovery in this proceeding. It claims to be free to intervene and take any position it chooses, but it may not be challenged on any of those positions. Likewise, it asserts that its witnesses are not subject to questioning on their

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<sup>4</sup> CLF cites the wrong Rule (mistakenly referencing the court's rules of *criminal* procedure). While Rule 36 of the Superior Court Rules used to apply to civil, criminal and domestic matters, the Rules were amended so that there is a different set of rules for civil proceedings. The currently applicable rule is Rule 23, which imposes a presumptive limit of 25 interrogatories, but the current rules, like the previous ones, provide for unlimited requests for admission and requests for production, as noted above.

<sup>5</sup> Moreover, CLF itself asked 72 data requests of PSNH (not including subparts) which PSNH answered. CLF then requested (and obtained) a deposition of PSNH's President/COO during which it asked 104 more questions.

credibility or bias – either in their own right or on the basis of information provided to them by CLF. CLF effectively claims that it is simply a group of lawyers without a client, free to intervene where they choose, and then to hide behind a claim of work product for every position they take. Thus, CLF can offer no real assistance to this Commission other than the expertise of lawyers who advocate for a particular cause, in this case, as stated on the CLF website: “working to shut down costly, highly polluting coal power plants such as Merrimack Station in Bow.”

Second, under this Commission’s rules, as well the court rules CLF suggests should apply, the type of objections offered by CLF have been found to be both inadequate and abusive. *See* PSNH-TC Motion at 11-15. Since CLF contends that it cannot be required to explain any position taken in this case, persists in refusing to abide by Commission rules, and contrary to its Motion to Intervene, is impeding the orderly and prompt conduct of this proceeding, its status as an intervenor fails to comply with RSA 541-A:32,II and therefore should be rescinded. Alternatively, as discussed below, the Commission should strike all of CLF’s non-compliant objections, deem CLF to have waived its right to object pursuant to Rule Puc 203.09(h), and require CLF to provide full and complete responses to PSNH’s data requests.

### **CLF’s General Objections**

Little need be said about CLF’s “General Objections” as they are inadequate and contrary to this Commission’s 1/31 Letter. *See* PSNH-TC Motion at 5-13. Despite the 1/31 Letter and Rule Puc 203.09(g), a rule requiring that “Objections to data requests shall: (2) Clearly state the grounds on which they are based,” CLF persists in making general objections and in repeating other “specific” objections that bear no relation to the question. This

Commission has specifically rejected such general responses. *Re: New England Telephone and Telegraph Company, Inc.*, 74 NH PUC 317 (1989); PSNH-TC Motion at 11-15.

CLF first objects “to the instructions to the extent that they seek information that goes beyond the scope of this proceeding and is not reasonably calculated to lead to admissible evidence.” CLF Responses (Attachment A) at 1. This is simply another generalized and unexplained relevance objection similar to those found inadequate by the Commission and the courts. *Id.* Second, as noted above, CLF reiterates the objection based on the number of questions, an objection which the Commission has already rejected. Third, CLF “objects to the data requests directed to CLF rather than in response to the pre-filed testimony,” contending that “CLF will not testify at hearing,” the “requests are designed to either discover work product or to impermissibly harass and burden CLF,” and perhaps most puzzling, that they “ignore the dual role of CLF as party and counsel in this matter.” *Id.*

CLF’s attempt to restrict data requests only to its one witness is directly contrary to the Commission’s rules, which provide that “any person covered by this rule *shall have the right* to serve upon *any party*, data requests, which may consist of a written interrogatory or request for production of documents.” Rule Puc 203.09 (b) (emphasis added). Under CLF’s interpretation, no effort could be made to determine the positions that CLF will take at the hearing. For example, CLF refuses to answer the question whether it intends to challenge the final reports produced by Jacobs Consultancy, Inc. on the issue of the prudence of expenditures for actual construction. *See* Response No. 92. It is unclear what CLF means by the objection that PSNH’s questions “ignore the dual role of CLF as party and counsel,” but this would appear to mean that there is no real party

in this matter other than the CLF lawyers and thus, every attempt to discern CLF's position is an improper search for work product. If so, CLF has no place in this proceeding.

### **CLF's Objections To Questions Asked Generally, Rather Than to Its Witness**

Although every data request filed by PSNH arguably seeks information in CLF's possession and provided to its witnesses, 39 of the 104 questions (Nos. 65-104) are specifically directed to CLF. In its initial objections, CLF objected to every such question on the grounds that it was "overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence."<sup>6</sup> CLF's January 27<sup>th</sup> Objections Nos. 65-104. Perhaps in an effort to appear to have provided a more specific objection, CLF belatedly expands this objection to state as follows and repeats the objection verbatim for every request made of CLF:

CLF objects to this data request because it is directed to CLF rather than directed to Dr. Stanton's pre-filed testimony; the procedural order dated November 15, 2013 clearly states that data requests are to be on pre-filed testimony and CLF will not testify at hearing. CLF further objects to the extent that this request is designed to either discover work product or to impermissibly harass and burden CLF rather than to discover information related to whether PSNH was prudent in its decision-making. PSNH bears that burden of proof, and the focus of the inquiry should not be on CLF and its internal decision-making processes. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

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<sup>6</sup> CLF's reference to the "not reasonably calculated to lead to admissible evidence" is presumably a reference to prior Rule 35(b) of the Superior Court Rules, which is now incorporated in Rule 21(b) of the Superior Court Rules-Civil. CLF's reference is selective. Rules 35(b) and 21(b) begin by providing as follows: "Scope of Discovery. Unless otherwise limited by order of the Court in accordance with these rules, the scope of discovery is as follows: (1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."



*See* CLF Response to PSNH Requests Nos. 65-104. If this was an effort at specificity, it was a poor effort.

First, nothing in the Procedural Schedule of November 15<sup>th</sup> suggests that the Commission was suspending its other rules, including Rule Puc 203.09, which permits requests to be filed on parties, particularly where CLF and other intervenors have had ample opportunity to pose questions to PSNH. Second, CLF's objection asserts that it may simply raise the objection of work product without further explanation, and that PSNH is required to take its word for the fact that there is a valid objection. Here, CLF ignores a key portion of what is now Rule 21(c) of the Superior Court Rules-Civil, on which it otherwise relies and which common sense would require regardless of whether the Rule applies at the Commission. Entitled "Privilege Log," the Rule states:

When a party withholds materials or information otherwise discoverable under this rule by claiming that the same is privileged, the party shall promptly and expressly notify the opposing party of the privilege claim and, without revealing the contents or substance of the materials or information at issue, shall describe its general character with sufficient specificity as to enable other parties to assess the applicability of the privilege claim. Failure to comply with this requirement shall be deemed a waiver of any and all privileges.<sup>7</sup>

Third, the objection offers no explanation of *why* each and every request made by PSNH is burdensome. Indeed, many of the requests are in the nature of requests for admission and may be answered "yes" or "no." *See, e.g.*, Requests Nos. 83-90.

Finally, CLF's repeated objection is notable for what it does not say. CLF does not (because it cannot) contend that the information sought is not relevant, or even that it will not lead to admissible evidence. Instead, CLF contends only that the request will not lead to admissible evidence *because* it is directed to CLF, is designed to harass, and because PSNH

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<sup>7</sup> The Rule is identical to former Rule 35(b).

bears the burden of proof. Thus, CLF's objection states "*for these reasons*, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence (emphasis added). In short, if the reasons are not a valid basis for the objection – and they are not – the objection cannot stand and CLF cannot contest the relevance of the question. And because the deficiency of these general objections to each question is, standing alone, enough to strike every objection and require an answer (PSNH-TC Motion at 11-15), the Commission should strike the objections and order CLF to answer.

CLF's real objection is that it should not have to explain – and therefore PSNH cannot attempt to limit – the positions it takes in this case, or to provide information within the possession of CLF. Simply because CLF supposedly has a "dual role....as party and counsel" does not mean that CLF is not required to produce information in its possession that might be relevant to its position in this case, or for that matter contradict it or bear on CLF's credibility or bias or that of its witness.<sup>8</sup>

Even a cursory review of the subject matter of the questions CLF refuses to answer demonstrates why CLF should be required to answer these questions. The following are some of the topics CLF refuses to address by the filing of its form objections.<sup>9</sup>

- Positions CLF has taken regarding pollution control projects at PSNH's Merrimack and Schiller Stations. Nos. 65-66 and 104.
- Economic analyses in CLF's possession concerning the Scrubber. No. 67.
- Economic analyses in the possession of CLF concerning the ability of PSNH to request a "variance" under RSA 125-O:17. No. 68.
- Fuel price forecasts relating to the price of coal, oil and natural gas available to CLF from 2005 through 2012. No. 69. CLF's witness is testifying to this issue. Likewise,

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<sup>8</sup> Under this "dual role" objection, PSNH, with its own in-house counsel, could conceivably make the same claim as CLF and similarly stonewall discovery efforts in other proceedings.

<sup>9</sup> Each item below is followed by the number of PSNH's request.

if CLF has information on such forecasts they are highly relevant.

- Efforts made and positions taken by CLF to support or oppose the Scrubber in the New Hampshire Legislature or with state and federal agencies. Nos. 70-76,80,81 and 98. These are relevant to bias and credibility and mirror requests made to PSNH which this Commission determined were relevant and instructed PSNH to answer.
- Documents in CLF's possession regarding estimates of newly proposed natural gas combined cycle generating stations, concerning the forward market for natural gas and the costs of power for such stations. Nos. 77-79. Note that CLF purports to answer these questions but says it is "not in the business of building" generating stations and just refers to Ms. Stanton's testimony. These answers are not responsive. Either it has responsive information or it doesn't.
- Requests for admission to limit issues in this docket. Nos. 82-92. For example, No. 88 asks for CLF's position on whether divestiture – an issue CLF sought to raise in this docket – was possible; No. 92 asks whether CLF intends to challenge the Jacobs Consultancy report – a response that might substantially limit issues in this docket. In addition to its objection, CLF says that information responsive to No. 92 "is set forth in the pre-filed testimony of Dr. Stanton," yet Stanton does not address the issue, and CLF does not answer the simple question. Nearly every one of these questions can be answered "yes" or "no," yet CLF contends that every request is "unduly burdensome."
- Requests for admission concerning natural gas prices. Nos. 93-94. As to No. 94, CLF again refers to Stanton's testimony but does not answer the question.
- Documents in CLF's possession concerning Merrimack Station that it obtained from state and federal agencies, and information concerning CLF's discussions with such agencies. Nos. 96-98.<sup>10</sup>
- Requests for admission on CLF's positions on "fracking." Nos. 99-102.
- Requests for admission on CLF's position concerning a natural gas fueled generating station in Massachusetts. No. 103.

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<sup>10</sup> During the March 12, 2012 temporary rate hearing in this proceeding, CLF moved to dismiss PSNH's petition due to PSNH's alleged "failure to meet their statutory burden to demonstrate that they have obtained all necessary permits and approvals from federal, state, and local regulatory agencies." Transcript, 3/12/12 at 160. At issue was whether PSNH had the requisite authority to take liquid wastewater to certain wastewater treatment facilities for disposal. Upon information and belief, CLF had previously obtained via the right-to-know process the very documentation that undermined the basis for its motion. Further, when asked by Commissioner Harrington whether CLF was saying that PSNH "does not have this permit and is in violation ...," CLF responded, "I don't know." *Id.* at 164. Had PSNH received responses to discovery questions such as these during the temporary rates portion of this proceeding, a substantial issue could have been avoided at hearing, and the need for subsequent legal briefs from PSNH and CLF and Commission action on the same would have been eliminated.

While CLF's repeated objections have no merit and should be stricken, each of these questions relates to topics and information relevant to this docket and should be answered. PSNH is entitled to know whether CLF has taken inconsistent positions to that asserted by CLF here. Likewise, PSNH is entitled to know whether information in CLF's possession supports or contradicts positions taken here either by CLF, its witness, or others. That information may well serve as a basis for cross-examination. And PSNH is entitled to know whether CLF took positions with the Legislature or agencies that contradict its current positions.

As noted, CLF does not contend that the information is not relevant, and it is apparent that it is. CLF's form objections to Requests 65-104 are facially inadequate. Given the defects in those objections, the Commission should strike these objections and order CLF to provide an answer to each of these Requests.

#### **CLF's Objections to Requests Specifically Addressed to Stanton's Testimony**

CLF does slightly better in responding to PSNH's requests addressed primarily to Dr. Stanton. Although it initially objected to every question, it now answers certain of the requests although continuing its general objections. PSNH does not contest CLF's responses to Requests 6, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22 (a simple answer preceded by the standard objection), 30 (see no. 22), 31, 55, 56, 58 (although preceded by the general objection), and 63. Thus, CLF has provided answers to 17 of 104 questions or less than 20 percent of the requests. These responses demonstrate that if CLF were not so interested in making objections, it could have answered the requests.

Apart from these answers, CLF's responses to questions posed to Stanton are deficient for a number of reasons. First, CLF simply repeated its general objections for many of these questions, contending that the request is "overbroad, unduly burdensome, and not reasonably

calculated to lead to the production of admissible evidence.” For the following requests, this objection is raised without any attempt to answer whatsoever: Nos. 3, 4, 5, 9, 10, 25, 28, 41-54 and 57. Therefore, for 22 of the 64 requests (more than one-third) addressed specifically to Dr. Stanton’s testimony, CLF stands by objections the Commission has already found inadequate. In each case, no explanation is given of why the request falls in this category or why the repeated objection is a fair response to the request. Furthermore, the “overbroad” objection is also raised for a large number of questions in which CLF stands by the objection but provides an inadequate answer. See Nos. 1, 8, 23, 26, 27, 33-40, 61 and 62 (15 of the 64). Finally, demonstrating the lack of seriousness of this objection, CLF feels compelled to raise it even when it answers the question. See Nos. 2, 11, 22, 30, 32, 58-60, and 63-64. In sum, notwithstanding the Commission’s 1/31 Letter, CLF continues to make general objections for 58 of the 64 questions addressed to Dr. Stanton. And this is so even though CLF concedes that PSNH had the right to pose such questions.

The extent to which these objections bear no relationship to the question asked and cannot be taken as made in good faith is demonstrated by the fact that: (1) CLF answers questions that are very similar to those it objects to and does not claim the question is “overbroad” etc. and answers a few questions notwithstanding the objection; (2) In addition to the mantra of “overbroad etc.” whenever the question includes subparts, notwithstanding the Commission’s 1/31 ruling, CLF objects on the basis that “the Rules of Civil Procedure, for example, limit the total number of interrogatories to 50, with each question counted separately whether subsidiary, incidental to or dependent on another question,” and one would assume that this objection would apply to any question beyond their alleged limit of 50 (actually 25, as noted

above) regardless of whether it includes subparts. In short, CLF and Dr. Stanton seem to object when they just don't want to answer the question.

Second, CLF's lack of good faith may also be seen by the fact that a number of questions are objected to on the basis that Dr. Stanton doesn't know where in her pre-filed testimony the question comes from. For example, Requests 41-54, each of which asks questions about *an appendix included with Stanton's report*, are objected to on the basis of "overbroad" etc. and because "we are unclear what appendix you are referring to in this request."<sup>11</sup> See also No. 57, which is objected to on the grounds that Dr. Stanton doesn't know "the cell range that you are referring to." If CLF or Dr. Stanton was legitimately confused by these requests, there was a simple solution: call counsel for PSNH and ask for clarification. Instead, each request is deemed to be "overbroad, unduly burdensome" or "unclear."

Third, even where CLF purports to answer a question, most of the answers are simply inadequate. The following demonstrates this point:<sup>12</sup>

- Request No. 1: The request asks for Dr. Stanton's file and CLF objects that the file is privileged, burdensome to produce and beyond the scope of RSA 516:29-b. Dr. Stanton undoubtedly has a file of information provided to her and materials she relied on for her testimony. In both state and federal courts, communications with experts are not privileged. Under New Hampshire practice, experts are required to produce their entire file and the Federal Rules require production of "all facts and data that the party's attorney provided and that the expert considered in forming the opinions to be expressed." Fed .R. Civ. Proc. 26(b)(4). And, of course, the expert may be deposed. RSA 516:29-b only establishes what must be in the report. PSNH is entitled to know what Dr. Stanton considered in preparing her testimony.
- Request No. 7: The request asks for Dr. Stanton's experience working with coal plants including working "directly with coal plants and/or investment decision making" and

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<sup>11</sup> In each case, the question references specific places in the appendix. See, e.g., No. 42 referring to Appendix, Scenarios 1-5, Note 7 and quotes from the appendix. Dr. Stanton apparently didn't spend much time looking for the specific "appendix referred to," which, of course, is attached to and incorporated into her testimony. As CLF did not Bates number its exhibits nor provide an alternate means of identifying particular pages, CLF's objection that it can't find the reference in its own submittal falls flat.

<sup>12</sup> This discussion does not include requests to which only a general objection (*i.e.*, overbroad, etc.) was raised. Those objections are so defective that a discussion of why the questions should be answered is unnecessary.

asks for her “experience with large construction projects, particularly at coal-fired plants” and for a summary of “all other site-specific work [she] ha[s] been involved with at coal-fired facilities.” The response is that “Dr. Stanton has not worked directly at coal-fired facilities.” The Request did not ask whether Dr. Stanton worked *at* such facilities but rather whether she worked *with* such facilities. In addition, that non-response leaves much of the question unanswered. Moreover, Dr. Stanton proposes to testify about cash flow analyses in completing and operating a coal-fired facility (Merrimack Station) and that decisions to proceed with a project like the Scrubber must be “reassessed continually throughout the planning and construction of the project.” Stanton testimony at 6-7. Accordingly, PSNH is entitled to know whether she has experience in this area.

- Request No. 8: The request asks whether Dr. Stanton has ever previously testified for CLF and if so, to provide copies of that testimony. Apart from the general objection, CLF answers that “non-privileged expert reports that Synapse has provided to CLF are available to PSNH via the internet.” Not only is the question (which might be answered “yes” or “no” not answered, but if the reports exist, PSNH should not be required to search the internet for them when Dr. Stanton and/or CLF has them available. PSNH is entitled to test whether Dr. Stanton has testified different from her testimony here, and whether she is biased based on her past testimony (if any) for CLF.
- Request No. 13: The request asks for an explanation of a phrase in Dr. Stanton’s testimony. CLF answers that she will answer if the question is not withdrawn. Although PSNH has filed a motion to strike on the topic, Dr. Stanton should answer it now, since the Commission has not ruled.
- Request No. 19: The request asked for the production of specific forecasts Dr. Stanton relied on to make statements concerning changes in natural gas prices. Stanton testimony at 8. CLF answered by objecting that “these forecasts are in the public domain” and stating “Without waiving the objection, Dr. Stanton relied upon data from PSNH and Synapse.” The answer is completely non-responsive. Without knowing what Stanton relied on (and she does not say), how would PSNH ever find such information “in the public domain”? How does PSNH know what forecasts Synapse made that she relied on? And the question asked for the production of documents, not a general statement of what she relied on.
- Request No. 20: The request asks for certain “price capacity forecasts” that Dr. Stanton may have relied upon. CLF objects that the reports are in the public domain and that Dr. Stanton “identified the FCM forecasts in her testimony.” Perhaps the forecasts are in the public domain, but that does not provide an answer to what she relied on nor has she produced the reports. If she relied on certain reports she should identify which ones. Then, if they are in the public domain, PSNH would know what to look for.
- Request No. 23: The request asks specific questions about invoiced expenses incurred by PSNH and specific issues in Dr. Stanton’s analysis. CLF files its “overbroad” objection and then states: “Dr. Stanton relied upon the data provided by PSNH in response to discovery in this docket.” The response is simply non-responsive and

evasive. PSNH did not ask what she relied on, it asked for specific information concerning her review of invoices.

- Request No. 24: The request asks for the production of an Excel spreadsheet included in Dr. Stanton's report and an explanation of the assumptions used in the spreadsheet. CLF's answer is "See Stanton Exh. 4." This response follows a pattern in many of CLF's responses. PSNH is attempting to test the assumptions made by Dr. Stanton, to obtain her work papers and the specific locations within the source documents (*e.g.*, page, table, or figures) where the information she uses or relies upon can be found. For example, Dr. Stanton provides the name of source documents for assumptions related to energy and capacity market prices, environmental capital and O&M costs, depreciation, property taxes, and general capital additions. However, she does not provide the specific locations within the source documents where the underlying calculations undertaken to derive the values displayed her Exhibit 4 appear. Thus, PSNH is unable to evaluate the basis for the estimates or their validity. PSNH is entitled to test her assumptions and CLF's answers are evasive.
- Requests Nos. 26 and 27: The requests ask specific questions about an Exhibit to Dr. Stanton's testimony. CLF raises its "overbroad" objection and states: "Without waiving the objection, many of PSNH's questions can be answered by examining the EXCEL spread sheet prepared by Dr. Stanton." Which questions? And which may not be answered by the examination? This is not a hard question to answer. CLF is simply being evasive. See also No. 24 above. Exhibit 4 lists the names of certain source documents that she used to generate her environmental cost forecasts, but she has not provided the specific locations within the documents (*e.g.*, page, table or figure numbers) where PSNH can find these values or the underlying calculations made to derive the values displayed in Exhibit 4.
- Request No. 32a: The request asked Dr. Stanton to provide a description of the basis for the development of scenarios used in her testimony. Although Dr. Stanton's testimony states that her scenarios "represent a range of possible future assumptions regarding gas prices and environmental control requirements," CLF does not answer the question or provide any justification for why Dr. Stanton's assumptions (*e.g.*, future environmental regulations) were within the realm of possible outcomes using information available as of March 2009. Thus, PSNH is unable to evaluate the basis for these assumptions or their validity.
- Request No. 33: The request asks for examples and references concerning a statement in Dr. Stanton's testimony; that is, for the support for the statement. CLF makes the general objection and states: "Response: Without waiving the objection, Synapse is routinely called upon to assess the work that utilities have done." The response bears no relation to the question. The question did not ask about Synapse's experiences or projections; it asked for Dr. Stanton's. And there is no answer to part b. of the question.



- Requests 35-40: The requests ask specific questions about Dr. Stanton's testimony. CLF makes its "overbroad" objection and "without waiving that objection" states that either "the answer to much of this question is contained in Dr. Stanton's pre-filed testimony (No. 34) or states "please see Dr. Stanton's pre-filed testimony." PSNH is entitled to ask specific questions about the testimony to obtain information or explanations about the testimony as well as to limit Dr. Stanton's opinions. The answers are inadequate. For example, request No. 35 asks for an explanation of why "each of the specific cost components and assumptions behind the Exhibit 4 spreadsheet is 'most likely.'" CLF answers by merely referencing the Exhibit. Dr. Stanton has not provided information in her testimony or in the Exhibit to substantiate why her "Reference Case" environmental cost forecast represent "most likely" values as of March 2009. With respect to requests 39 and 40, see Request No. 24 above.
- Requests 59 and 60: The requests asked Dr. Stanton to provide the back-up for her forecasts of the operation and maintenance costs of the scrubber and for her environmental cost forecasts. After making its general objections (which prevent PSNH from determining whether the answer is complete), CLF references a series of source documents used to generate her forecasts but provides no explanation of specific locations within the documents supporting her calculations. Dr. Stanton knows exactly what information in these source documents she relied on to make her calculations and should provide that information so that PSNH can evaluate the basis for her forecasts and determine their validity. The answer is simply evasive.

### **Conclusion**

CLF contended that its intervention in this docket would be of assistance to the Commission based on its "institutional expertise" and would not "impair the orderly and prompt conduct of the proceedings." Its actions prove otherwise. CLF refuses to answer any question about its expertise or knowledge and its insistent repetition of objections that the Commission has already found inadequate is a textbook example of how to delay a proceeding. CLF claims "the dual role of CLF as party and counsel in this matter" and hides behind the wall of work product to refuse to provide any of this expertise. CLF cannot have it both ways. If it has anything to offer in this docket other than as an advocate for closing Merrimack Station, it should be required to answer the discovery or withdraw. Indeed, its conduct is such that it has run afoul of the statutory conditions set forth in RSA 541-A:32,II for discretionary intervenor status and the

Commission should therefore rescind that status. Absent that relief, all of CLF's objections should be stricken, and CLF should be required to provide full and complete answers to each of the questions PSNH has posed. Moreover, it should be compelled to provide complete and responsive answers to Requests 1, 7, 8, 13, 19, 20, 23, 24, 26, 27, 32a, 33, 35-40, 59, 60 and 64.


**WHEREFORE**, PSNH respectfully moves this Commission to:

- A. Rescind the intervenor status of the Conservation Law Foundation pursuant to RSA 541-A:32,II and V;
- B. In the alternative:
  - a. Strike the objections of CLF to PSNH's data requests;
  - b. Compel CLF to respond completely and fully to Requests 1, 7, 8, 13, 19, 20, 23, 24, 26, 27, 32a, 33, 35-40, 59, 60 and 64 in a full, comprehensive, and timely manner; and
- C. Grant such other relief as the Commission deems necessary and appropriate.

Respectfully submitted,

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

Dated: February 21, 2014

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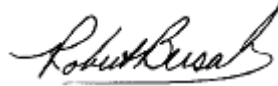
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**Certificate of Service**

I hereby certify that a copy of this Objection has been served electronically on the persons on the Commission's service list in this docket in accordance with Puc 203.11 this 21<sup>st</sup> day of February, 2014.

A handwritten signature in black ink, appearing to read "Robert Bersak", written over a horizontal line.

Robert A. Bersak