

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 11-250

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

INVESTIGATION OF MERRIMACK STATION SCRUBBER PROJECT AND COST RECOVERY

**CONSERVATION LAW FOUNDATION'S OBJECTION TO PUBLIC SERVICE
COMPANY OF NEW HAMPSHIRE'S MOTION 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**

NOW COMES the Conservation Law Foundation ("CLF") and, pursuant to Puc 203.07(e), hereby objects to the above-referenced Motion filed by PSNH with the Commission on February 21, 2014. In support of this objection, CLF asserts the following:

Factual and Procedural History

1. The Conservation Law Foundation (CLF) is a non-profit environmental advocacy organization with limited resources. See <http://www.clf.org/about-clf/>. Its members include customers of the Public Service Company of New Hampshire.

2. The Public Service Company of New Hampshire (PSNH) is New Hampshire's largest electric utility, serving about 500,000 homes and businesses. It employs almost 1,500 workers. <https://www.psnh.com/CompanyInformation/Company-Information.aspx>.

3. On November 18, 2011, PSNH filed a Motion for Establishment of Temporary Rates - seeking to recover costs the company incurred installing a scrubber at Merrimack Station - which commenced this docket. Shortly thereafter, on December 8, 2011, CLF filed a Petition to

Intervene. PSNH did not object to that petition in writing or at hearing. *See DE 11-250 Tab 8: December 23, 2011 Sec Ltr Granting Interventions and Approving Procedural Schedule.*

4. The Commission granted temporary rate recovery of costs associated with the scrubber project on April 10, 2012. Thereafter this docket focused on the prudence of the costs and cost recovery for the scrubber installed by PSNH at its coal-fired generator known as Merrimack Station. *See e.g. Order No. 25,445 (December 24, 2012); Order No. 25,506 (May 19, 2013); Order No. 25,546 (July 15, 2013); and Order No. 25,565 (August 27, 2013).*

5. Pursuant to a series of scheduling orders, Sierra Club and CLF together served a total of 59 discovery requests¹ on PSNH seeking information relevant to that prudence review. PSNH objected in part to those requests. TransCanada and CLF then filed motions to compel, and this Commission issued orders granting in part and denying in part the motions to compel. *See Order No. 25,334 (March 12, 2012); Order No. 25,398 (August 7, 2012).*

6. Thereafter, consistent with Commission Order No. 25,592 (11/01/13), CLF submitted the pre-filed testimony of Dr. Elizabeth Stanton on December 23, 2013. Dr. Stanton's substantive testimony (exclusive of cover page and exhibits) totaled only 15 pages. Dr. Stanton is an economist. "The purpose of [her] testimony is to discuss the prudence of decisions made to continue construction on the Merrimack scrubber after its costs were known by PSNH to be significantly higher than originally expected." *See DE 11-250 Tab 137: CLF Pre-filed Testimony of Elizabeth A. Stanton, PhD at p. 4.*

7. On January 16, 2014, PSNH served 104 data requests on CLF, many of which contain detailed subparts for a total of 187 requests. It also served 59 data requests on Sierra

¹ PSNH indicates that we served 72 data requests. CLF's review of the file indicates that CLF and Sierra Club served a first set of discovery with 20 requests for production and 12 interrogatories and two subsequent sets of 4 and 23 data requests respectively, for a total of 59 discovery requests. Two interrogatories contained a total of six subparts.

Club, with subparts totaling about 120 requests. At a minimum, PSNH served 105 more data requests or almost triple the amount of data requests (not including subparts) on Sierra Club and CLF than they together served on PSNH. At a maximum, PSNH served a total of 307 data requests on these two intervening parties compared to the 59 requests that they together served on PSNH.

8. On January 27, 2014, CLF filed a Motion seeking an Order limiting both the scope and number of data requests PSNH may serve on the pre-filed testimony submitted by CLF. At the same time, CLF served specific objections to the Data Requests on PSNH. *See DE 11-250 Tab 156: CLF Objections to Data Requests Served by PSNH and Motion to Direct PSNH to Serve Reasonable Number and Scope of Requests.* The Office of Consumer Advocate (OCA) and TransCanada filed similar motions. *See DE 11-250 Tab 152: OCA Objection to Excessive Data Requests and Motion to Resubmit Reasonable Number of Requests; See DE 11-250 Tab 155: TransCanada Objection to PSNH Data Requests and Motion to Direct PSNH to Submit Reasonable Number of Requests.* Neither the OCA nor TransCanada prepared specific objections to the data requests. Instead both asserted general objections to the requests. TransCanada, for example, had been served with 425 data requests from PSNH and sought a ruling from the Commission limiting its burden to respond to so many requests.

9. On January 31, 2014, the Commission denied the relief requested by the motions “based on lack of specificity, *without prejudice to the parties* raising their issues as directed below.” (emphasis added). *See DE 11-250 Tab 160: Sec Ltr Denying Relief Requested by Motions and Updated Procedural Schedule.* The Commission then instructed the parties to file objections to data requests in compliance with Puc 203.09(g)(2) by February 7, 2014. In relevant part, Puc 203.09(g)(2) mandates that objections state the grounds on which they are based.

10. In accord with the January 31 Secretarial Letter and Puc 203.09(g)(2), in response to the 104 data requests (with subparts totaling 187 data requests), CLF provided more detailed specific objections on February 7 and CLF and its witness responded to the data requests on February 13 as follows:

- a. Sixty-four questions were directed to CLF's witness, Dr. Stanton. She answered 62 of those requests in the following manner. Dr. Stanton answered 39 requests and indicated she would answer one other request if PSNH did not withdraw the question as it had indicated that it might for a total of responses to 40 requests. *See Data Rqsts 1, 2, 7, 11, 12, 14-24, 26-27, 29-40, 55, 56, 58-64; 13(will answer if PSNH does not withdraw question)*. She asked for clarification of the meaning of 17 other requests mostly due to the fact that PSNH either refers to page numbers in an Excel exhibit which contains no page numbers or repeatedly refers to an appendix, and Dr. Stanton did not include an appendix with her testimony. *See Data Rqsts 3, 28, 41-54, and 57*. Counsel for CLF by phone and email informed PSNH that if they wished to clarify those questions, we could discuss answering them. PSNH declined that invitation.² For five other requests, Dr. Stanton informed PSNH that the information was readily available via the internet (and provided a web link) or in one instance that the AESC report of which they asked a very detailed request was one PSNH was a stake holder in and was already intimately familiar with the process and contents thereof. *See Data Rqsts 4-6, 8 and 25 (AESC report)*. CLF, on behalf of Dr. Stanton, objected to two

² On February 26, after CLF had already immersed itself in preparing this objection, PSNH sent an email that purportedly more accurately identified the information PSNH sought. Although we have not had time to review the email in detail, we believe that the 17 requests suffer from the same defect as many of the other requests directed at Dr. Stanton—that is they are repetitive burdensome attempts to make her restate her testimony and impose a higher burden on her than that generally placed on expert witnesses in civil litigation. *See ¶¶ 41-55 below*. We therefore request that the Motion to Compel responses to those requests be denied as well. *See also ¶ 26* (Motion to Compel denied where moving party fails to separately set forth argument for each request).

requests which sought legal or legislative information. *See Data Rqsts 9-10*. No answers were provided to those two requests.

- b. PSNH directed the remaining 40 data requests to CLF. Of those, over objection, CLF provided responses to eight requests. *See Data Rqsts 67, 69, 77-79, 90, 92, and 94*. CLF objected to the remaining 32 requests and set forth a detailed objection to each, that sets forth more than the usual language to objections, *e.g.* CLF provides more detail than simply stating overbroad or not reasonably calculated to lead to admissible evidence. CLF genuinely believes that the scope of the requests goes well beyond this Commission’s factual review of the prudence of the costs and cost recovery for the scrubber installed by PSNH at its coal-fired generator known as Merrimack Station, improperly seeks work product and legal analysis, and improperly requests admissions. CLF read the Commission’s November 15, 2013 Secretarial Letter to limit the scope of the data requests to pre-filed testimony - the letter states “Data Requests *on Testimony*.” (emphasis added).

11. CLF timely served both its objections and answers to PSNH data requests. *See Exh A and B attached: 02/07/2014 Objections and 02/14/2014 Responses*.

12. Subsequently, PSNH and CLF discussed our discovery disputes. PSNH never indicated it viewed our behavior as egregious or that it would seek an order rescinding CLF’s intervenor status. *See Exh. C: Email 2/19-2/24*.

13. PSNH thereafter filed its motion to revoke CLF’s intervenor status or in the alternative, to compel it to further answer the data requests.

Legal Analysis

Introduction and Standard of Law

14. PSNH begins its Motion with an introduction characterizing CLF's responses and objections as a violation of a "direct edict of the Commission, the Commission's rules, the Commission's precedent, and well-settled case law." *PSNH Mtn to Compel CLF at p. 1*. PSNH also indicates that it made a good faith effort to resolve the discovery dispute, despite concealing from CLF the fact that it intended to move to rescind the organization's intervenor status and despite the fact that its dialogue with CLF in no way mirrors the vitriol of its motion against CLF.

15. PSNH cites a New York federal district court case in support of its position. *Pegoraro v. Marrero*, 281 F.R.D. 122, 128 (S.D.N.Y. 2012). The full quote from that case, which differs from the excerpt in PSNH's brief, is: "[B]oilerplate objections that include unsubstantiated claims of undue burden, overbreadth and lack of relevancy," while producing "no documents and answer[ing] no interrogatories ... are a paradigm of discovery abuse." *Id.* (citing *Jacoby v. Hartford Life & Accident Ins. Co.*, 254 F.R.D. 477, 478 (S.D.N.Y.2009)). The *Pegoraro* decision concerned interpretation of the Federal Rules of Civil Procedure (which do not apply before the Commission) and, in relevant part, defendant's failure to answer certain interrogatories and requests for production. The remedy was to order defendant to answer some but not all of the contested discovery requests, based on the court's review of the objections asserted. *Pegoraro*, 281 F.R.D. at 128-134. The court did not sanction the defendant nor did it take any action tantamount to the relief requested by PSNH against CLF: rescinding our ability to participate as an intervenor in a docket to which we have been a participant since its inception. *Id.* at 134 (denying request for attorney's fees to plaintiff and finding most objections to be warranted). If anything, the *Pegoraro* decision affirms this Commission's traditional practice

when it reviews motions to compel, a review of the discovery requests in controversy and a determination regarding which, if any, must be answered with no imposition of sanctions.

16. The correct standard of law applied by this Commission when it considers discovery disputes begins with the edict that: “The rules of evidence shall not apply in an adjudicative proceeding. Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial and unduly repetitious evidence. Agencies shall give effect to the rules of privilege recognized by law.” *DE 10-261, PSNH Least Cost Integrated Resource Plan, Order No. 25,263 (08/30/11) at 4 (citations omitted); RSA 541-A:33*. Parties seeking to compel discovery must show that the information sought is relevant to the proceeding or is reasonably calculated to lead to admissible evidence. *Id.* (citations omitted). Moreover, “[i]n general, discovery that seeks irrelevant or immaterial information is not something [the Commission] should require a party to undertake.” *Order No. 25,263 (08/30/11) at 5. See also DE 09-180, PSNH Proposed Default Energy Service Rate—2010, Order 25,048 (11/30/09) at 9 (Commission applies by analogy superior court standard applicable to civil litigation, information must be relevant to the proceeding or reasonably calculated to lead to admissible evidence.)*

17. The court standard applicable to civil litigation places control over the breadth and scope of pre-trial discovery in the sound discretion of the trial judge. *In re Haines, 148 N.H. 380, 381 (N.S. 2002)(citing Phillips v. Verax Corp., 138 N.H. 240, 247, 637 A.2d 906 (1994))*. In that regard, evidence is relevant if it tends to make the existence of any fact *consequential* to the determination of the action more or less probable than it would be without admission of the evidence. Irrelevant evidence is inadmissible. *Id.* (citations omitted)(emphasis added). To

compel discovery, the moving party must show that the evidence is “essential” to the case, *i.e.* it is relevant and “unavailable from any other source.” *Id.*

18. With respect to discovery disputes, neither the court nor this Commission imposes sanctions in instances where there is no intentional misconduct and certainly not for asserting initial objections to interrogatories or requests for production. *See e.g. DE 11-250, Order No. 25,334 (March 12, 2012); Order No. 25,398 (August 7, 2012); Wilhelmsen v. JC Plumbing & Heating, 2008 N.H. Super. LEXIS 123 (N.H. Super. Ct. 2008)*(Declining to impose sanctions for discovery abuse where no intentional misconduct was found); *see also State v. Cotelli, 143 N.H. 275, 277-278* (State failed to comply with discovery order and sealed or destroyed some of the records and appeals court still refused to sanction dismissal of criminal case).

19. In addition, this Commission has recognized that its procedural rules allow parties to seek relief from burdensome and voluminous discovery requests. *See Order No. 24,485 (July 8, 2005)* (Commission Staff recognized that the procedural rules allow parties to object to voluminous data requests and serve as a safeguard against discovery abuse that is intended to frustrate participation, such as those that may be overbroad and unduly burdensome). CLF herein renews its objection to the voluminous nature of PSNH’s data requests to CLF. PSNH has served more data requests on CLF, than CLF and Sierra Club combined served on it; and the focus of this docket is on the prudence of PSNH’s decisions and costs related to installing the scrubber at Merrimack Station.

Motion to Rescind Intervenor Status Must Be Denied

20. Before addressing the Motion to Compel, CLF must respond to that portion of PSNH’s motion that seeks to rescind CLF’s intervenor status. CLF searched both Westlaw and Lexis databases. The *only* Commission matters we could find where a moving party sought to

rescind the intervenor status of other parties involved PSNH seeking to exclude intervenors who sought to present evidence contrary to PSNH's position. *See Electric Utility Customers, DE 12-097, Order No. 25,439 (PSNH Motion to Rescind Intervenor Status of PNE); Petition for Approval of Purchased Power Agreement with Laidlaw Berlin BioPower, LLC, 96 N.H. P.U.C. 130, DE 10-195, Order No, 25,213 (PSNH Motion to Rescind Intervenor Status of Concord Steam); In re Public Service Company of New Hampshire, 86 N.H.PUC 748, DE 01-089, Order No. 23,840 (PSNH Motion to Rescind Intervenor Status of Town and NCP).* The Commission did not grant any of those motions.

21. Nonetheless, PSNH's aggressive posture toward intervenors appears to have had a chilling effect on the ability or desire of intervenors to further participate; both PNE and Concord Steam ultimately voluntarily withdrew and their testimony was stricken from the record. *See e.g. Order No. 25,439 (December 7, 2012)(Intervenor withdrew within three weeks); Order No. 25,213 (April 18, 2011) (Intervenor withdrew within two weeks).*

22. The Commission should deny the Motion to Rescind Intervenor Status and signal in its order that it will not condone such an aggressive tactic where a party has not exhibited a pattern of bad faith conduct or intentional disregard for Commission orders. *See ¶¶ 5-13 above.* CLF respectfully requests that the Commission instead focus on the motion to compel responses to data requests, and consider that portion of the motion on the merits as it did when it considered the motions to compel filed by CLF and TransCanada to obtain further discovery from PSNH. *See ¶ 5 above.*

23. For the above reasons, the Commission should not sanction the aggressive tactics repeatedly used by PSNH in various dockets to silence the voice of those who question its managerial decision-making. Without intervenors, the Commission – with its limited resources –

would lose important sources of evidence relevant to its decision-making processes. This is especially true under the present circumstances, where PSNH did not object to CLF participating as an intervenor, CLF has complied with the Commission's order to timely provide specific objections and answers, and CLF communicated with PSNH in good faith to resolve portions of the discovery dispute. *See ¶¶ 7-12 above.*

Motion to Compel Further Responses from CLF Must Be Denied

24. To compel discovery, PSNH must show that the evidence it seeks is relevant and “unavailable from any other source.” *In re Haines, 148 N.H. at 381.* Moreover, this Commission will deny a Motion to Compel where the moving party has not made a good faith effort to resolve the discovery dispute. *Freedom Ring Communications, LLC D/B/A Bay Ring Communications, DT 06-067, Order No. 24,760.* In this case, PSNH's Motion to Compel Discovery Responses from CLF does not contain that certification. PSNH merely states in a footnote that it “made a good faith effort to resolve the dispute informally.” *See PSNH Mtn to Compel re CLF at p. 1, n.1.* Contrary to the assertion of good faith, PSNH essentially informed CLF that it accepted none of CLF's responses. PSNH also failed to cure the defects in the requests identified by CLF that needed clarification. Finally, counsel from PSNH failed to reveal to CLF that, as part of its strategy to resolve the dispute, it would seek to rescind CLF's intervenor status. *See ¶ 12 above.*

25. More importantly, this Commission denies Motions to Compel responses to data requests that are an attempt to elicit further legal characterizations or argument from an opposing party, or are “an effort to engage an opposing party in what is essentially a written dialogue about what the Commission has or has not previously decided or what a particular witness has or has not said.” *Freedom Ring Communications, LLC D/B/A Bay Ring Communications, DT 06-*

067, *Order No. 24,760* at p. 2. This Commission treats data requests as “a vehicle for developing factual information.” *Id.* Data requests which are essentially requests for admissions will not be allowed. Requests for Admission must be authorized by the Commission and styled in accord with Puc 203.09(j). *Id.* With respect to data requests, the requested factual information must be relevant and unavailable from other sources. *See ¶¶ 14-19 above.*

26. Finally, to the extent that a moving party does not set forth each specific request and offer argument as to why it should be answered, the moving party has waived its arguments with respect to that request. *Freedom Ring Communications, LLC D/B/A Bay Ring Communications, DT 06-067, Order No. 24,789 at p.4 (citing NH Dept of Env Services v. Marino, 928 A.2d 818, 828 (2007)).* It is for this very reason that the Commission ordered CLF to set forth specific objections to each request, and authorized it without prejudice to renew any arguments raised in its Motion. *See ¶ 9 above.*³

27. PSNH’s Motion should be denied to the extent that it does not separately identify each request for which it seeks a response and the argument related to that request. In other words, PSNH has waived its arguments with respect to any data request that it does not separately set forth in its motion with an argument as to why that request should be answered.⁴

28. In addition, PSNH’s Motion should be denied to the extent that it asserted 40 data requests at CLF that are not designed to elicit admissible facts or facts designed to lead to admissible evidence. Although PSNH has not properly presented its argument in this regard, *i.e.* it has not set forth each request to which it seeks a response and the argument pertaining to each such request, on pp 10-11 of its Motion it makes general arguments related to why CLF should

³ CLF has included its objections and responses as Exh. A and B to this pleading. To the extent not specifically set forth herein, CLF incorporates its objections and the reasoning behind them into this pleading and requests that the Commission deny the Motion to Compel.

⁴ The fact that PSNH did not separately set forth each request it believes CLF failed to adequately answer illustrates the voluminous and burdensome nature of the requests.

answer the data requests. Although PSNH has waived all or many of its arguments, CLF's position with respect to the general arguments set forth by PSNH is in ¶¶ 29- 39 below.

29. PSNH argues that CLF should answer requests 65-66 and 104 asking for "positions CLF has taken regarding pollution control projects at PSNH's Merrimack and Schiller Stations." *PSNH Mtn to Compel re CLF at p. 10*. Here is CLF's position with respect to those requests:

Q-PSNH-65. Provide any and all documents related to positions CLF has taken, including the development of such positions, regarding any pollution control projects at the "affected sources" as defined in RSA 125-O:12, I (including the Scrubber), including, but not limited to:

- a. Board meeting minutes or notes (formal or informal);
- b. Meeting minutes or notes of any Board subcommittees or special committees;
- c. Notes or minutes from any committees within CLF,
- d. Any internal notes or memoranda of any CLF employee, agent, officer or board member; and
- e. Any electronic mail message, including attachments, or any other electronic communications.

Objection: 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.

Argument: This request does not seek factual information that will assist the Commission in this docket. Moreover, the scope of the request is very broad, it has no date reference, includes internal communications and work product, privileged meetings with external and internal litigation teams, and requires a search for informal and formal notes which is extensive and time consuming. This request is very burdensome and is not directed to elicit information regarding the prudence of PSNH's decision-making with respect to the scrubber. Finally, this request does nothing to get at the facts of the testimony that CLF will present through its witness. No one internal to CLF will testify at hearing. PSNH did not object to CLF intervening in this docket and is well versed in CLF's advocacy from numerous other dockets and court cases in which

CLF and PSNH have been parties. This request seeks to make work for CLF to deter it from continuing to intervene in this docket to present evidence to the Commission of a viewpoint different from that of PSNH. See ¶¶ 16-17 above.

Q-PSNH-66. Is it CLF's position that if PSNH suspended and cancelled the scrubber project after prudently incurring costs, but before the scrubber actually provided service to consumers, PSNH would be able to recover the costs it had expended? If not, why not?

Objection: 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 legal reasoning. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is tantamount to a request for admission or a request that seeks to ascertain or debate legal strategy on legal issues that are for this Commission to determine. To the extent that CLF has a discoverable position, it is encompassed in the pre-filed testimony of our witness. This request is otherwise impermissible. See ¶ 25 above.

Q-PSNH-104. Please provide copies of all CLF's media releases, web site postings, blogs, twitter posting and the like concerning any of the "affected sources" as defined in RSA 125-O:12, I (including the Scrubber) from 2005 to present.

Objection: 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 impermissibly harass and burden CLF rather than to discover information related to whether PSNH was prudent in its decision-making during the installation of the scrubber. PSNH bears the burden of proof, and the focus of the inquiry should not be on CLF. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: To begin with, PSNH could search the internet and our website for this information. Therefore this information is available from other sources. See ¶ 17 above. This request does not seek factual information that will assist the Commission in this docket. It is very burdensome and is not directed to elicit information regarding the prudence of PSNH's decision-making with respect to the scrubber. Finally this request does nothing to get at the facts of the testimony that

CLF will present through its witness. No one internal to CLF will testify at hearing. PSNH did not object to CLF intervening in this docket and is well versed in CLF's positions. This request seeks to make work for CLF to deter it from continuing to intervene in this docket to present evidence to the Commission of a viewpoint different from that of PSNH. See ¶¶ 16-17 above.

30. PSNH states that “the following are some of the topics CLF refuses to address” – “Economic analyses in CLF’s possession concerning the scrubber. No. 67.” *PSNH Mtn to Compel re CLF at p. 10*. Here is CLF’s position:

Q-PSNH-67. Please provide copies of all economic analyses in the possession of CLF concerning the flue gas scrubber at Merrimack Station.

Objection: 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.

Response: Without waiving the objection, to the extent that this request does seek a valid disclosure of data, CLF has already submitted the economic analysis of Dr. Stanton concerning the flue gas scrubber at Merrimack Station.

Argument: Contrary to any assertion by PSNH, CLF provided a response to this request to the extent that it seeks information related to this docket. Beyond that, PSNH has provided no specific argument related to this request as to why CLF should provide more than what it has already provided and therefore has waived any such argument. Finally to the extent that CLF has more information, it is entitled to work product protection for its notes, memoranda or communications amongst its internal staff.

31. PSNH states that “the following are some of the topics CLF refuses to address” – “Economic analyses in the possession of CLF concerning the ability of PSNH to request a “variance” under RSA 125-O:17. No. 68.” *PSNH Mtn to Compel re CLF at p. 10*. Here is CLF’s position:

Q-PSNH-68. Please provide copies of all economic analyses in the possession of CLF concerning the ability of PSNH to request a "variance" under RSA 125-O:17.

Objection: 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. Moreover this request seeks a legal conclusion, and the Commission has already determined or will determine the ability of PSNH to seek a variance under RSA 125-O:17.

Argument: See ¶¶ 25-26 above. This Commission denies motions to compel responses to data requests that are an attempt to elicit further legal characterizations or argument from an opposing party, or are "an effort to engage an opposing party in what is essentially a written dialogue about what the Commission has or has not previously decided or what a particular witness has or has not said. Freedom Ring Communications, LLC D/B/A Bay Ring Communications, DT 06-067, Order No. 24,760 at p. 2. Moreover, to the extent that it is responsive to this request, CLF has provided Dr. Stanton's analysis.

32. PSNH states that "the following are some of the topics CLF refuses to address" – "Fuel price forecasts relating to the price of coal, oil and natural gas available to CLF from 2005 through 2012. No. 69. PSNH argues: "CLF's witness is testifying to this issue. Likewise if CLF has information on such forecasts they are highly relevant." *PSNH Mtn to Compel re CLF at p.*

10. Here is CLF's position:

Q-PSNH-69. Please provide all fuel price forecasts relating to the price of coal, oil and natural gas available to CLF from 2005 through 2012.

Objection: 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.

Response: Without waiving the objection and to the extent that this request does seek a valid disclosure of data, CLF has already identified the fuel price forecasts that Dr. Stanton relied upon in formulating her opinions.

Argument: Contrary to any assertion by PSNH, CLF provided a response to this request to the extent that it seeks information related to this docket. Dr. Stanton's pre-filed testimony lists all of the forecasts that she relies upon. Beyond that, PSNH has provided no specific argument related to this request as to why CLF should provide more than what it has already provided and therefore has waived any such argument. See ¶ 26 above. Moreover, the request is overbroad in that it seeks information that goes beyond the time frame contemplated by the Commission in this docket (i.e. the timeframe during which PSNH made managerial decision concerning the building of and incurred the costs of building the scrubber) and therefore does not assist the Commission in rendering the factual determinations it must make. Finally PSNH would have equal or greater access to fuel forecasts during the relevant time frame. See ¶¶ 16-17, 24, and 26.

33. PSNH states that “the following are some of the topics CLF refuses to address” – “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.” *PSNH Mtn to Compel re CLF at p.*

11. Here is CLF's position:

Q-PSNH-70. Please provide a copy of any document provided to any elected or appointed government official in New Hampshire by CLF related to "An ACT relative to the reduction of mercury emissions" that took effect on June 8, 2006.

Objection: 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. Finally the Commission has made clear that the scope of this docket will not include lobbying efforts before the

legislature. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is a request for irrelevant information that goes beyond the scope of the issues for determination in this docket. It also is an attempt to impermissibly shift the focus from PSNH's prudence to CLF. Moreover it attempts to elicit legal positions taken by CLF. See ¶¶ 16-17, 24-25. Finally PSNH was intimately involved in this legislative process and the information it seeks is a matter of public record.

Q-PSNH-71. Please identify any individual employed by or otherwise compensated by CLF to work on its behalf concerning "An ACT relative to the reduction of mercury emissions" that took effect on June 8, 2006.

Objection: 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. Finally the Commission has made clear that the scope of this docket will not include lobbying efforts before the legislature. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is a request for irrelevant information that goes beyond the scope of the issues for determination in this docket. It is also an attempt to impermissibly shift the focus from PSNH's prudence to CLF. Moreover it attempts to elicit legal positions taken by CLF. See ¶¶ 16-17, 24-25.

Q-PSNH-72. Please provide a copy of any document provided to any elected or appointed government official in New Hampshire by CLF related to Senate Bill 152 and House Bill 496 in 2009.

Objection: 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. Finally the Commission has made clear that the scope of this docket will not include lobbying efforts before the legislature. For these reasons, this

request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is a request for irrelevant information that goes beyond the scope of the issues for determination in this docket. It is also an attempt to impermissibly shift the focus from PSNH's prudence to CLF. Moreover it attempts to elicit legal positions taken by CLF. See ¶¶ 16-17, 24-25.

Q-PSNH-73. Please identify any individual employed by or otherwise compensated by CLF to work on its behalf concerning Senate Bill 152 and House Bill 496 in 2009.

Objection: 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. Finally the Commission has made clear that the scope of this docket will not include lobbying efforts before the legislature. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is a request for irrelevant information that goes beyond the scope of the issues for determination in this docket. It is also an attempt to impermissibly shift the focus from PSNH's prudence to CLF. Moreover it attempts to elicit legal positions taken by CLF. See ¶¶ 16-17, 24-25.

Q-PSNH-74. Please provide all documents exchanged between CLF and the U.S. Environmental Protection Agency from 2006 to the present related to the "affected sources" as defined in RSA 125-O:12, I.

Objection: 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. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. Finally, in addition to all of the above objections, to the extent that CLF communicated with any governmental agency, PSNH can obtain that information through a FOIA request.

Argument: This request clearly seeks information beyond the scope of the factual determinations that the Commission will make in this docket, and has nothing to do with PSNH's actions. See ¶¶ 16-17, and 25. The information is also available from a third party. ¶ 24.

Q-PSNH-75. Please provide copies of any and all correspondence that CLF had with NHDES that pertains to the "affected sources" as defined in RSA 125-O:12, I.

Objection: 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. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. Finally, in addition to all of the above objections, to the extent that CLF communicated with any governmental agency, PSNH can obtain that information through a FOIA request.

Argument: This request clearly seeks information beyond the scope of the factual determinations that the Commission will make in this docket, and has nothing to do with PSNH's actions. See ¶¶ 16-17, and 25. The information is also available from a third party. ¶ 24.

Q-PSNH-76. Please provide copies of any and all documents that CLF provided to DES, any legislator or any state official concerning the "affected sources" as defined in RSA 125-O:12, I.

Objection: 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. Also the Commission has made clear that the scope of this docket will not include lobbying efforts before the legislature. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. Finally, in addition to all of the above objections, to the extent that CLF communicated with any governmental agency, PSNH can obtain that information through a FOIA request.

Argument: This request clearly seeks information beyond the scope of the factual determinations that the Commission will make in this docket, and has nothing to do with PSNH's actions. See ¶¶ 16-17, and 25. The information is also available from a third party. ¶ 24.

Q-PSNH-80. Who if anyone attended hearings or testified before the Legislature on behalf of CLF relating to the consideration of House Bill 1673 during the 2006 legislative session? Provide copies of all documents provided to the legislature by CLF.

Objection: 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 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. Also the Commission has made clear that the scope of this docket will not include lobbying efforts before the legislature. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is a request for irrelevant information that goes beyond the scope of the issues for determination in this docket. It is also an attempt to impermissibly shift the focus from PSNH's prudence to CLF. See ¶¶ 16-17, 24-25. Moreover this information is contained in legislative records and is likely already known to PSNH. ¶ 24.

Q-PSNH-81. Who if anyone testified before the Legislature on behalf of CLF relating to the consideration of House Bill 496 and/or Senate Bill 152 during the 2009 legislative session? Provide copies of all documents provided to the legislature by CLF.

Objection: 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 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. Also the Commission has made clear that the scope of this docket will not include lobbying efforts before the legislature. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is a request for irrelevant information that goes beyond the scope of the issues for determination in this docket. It is also an attempt to impermissibly shift the focus from

PSNH's prudence to CLF. See ¶¶ 16-17, 24-25. Moreover this information is contained in legislative records and is likely already known to PSNH. ¶ 24.

Q-PSNH-98. Did CLF have any discussions with any state or federal agencies related to Merrimack Station or the Scrubber during the period 2005 to present? If so please provide details of such conversations, including but not limited to

- a. The identity of the agency;
- b. The identity of agency officials who participated in or were present at the discussions;
- c. The dates of those discussions;
- d. The subject matter of those discussions;
- e. The location of those discussions;
- f. The reason for those discussions; and
- g. Copies of all documents produced by CLF at those discussions or received from the agency.

Objection: 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 impermissibly harass and burden CLF rather than to discover information related to whether PSNH was prudent in its decision-making during the installation of the scrubber which does not encompass the years 2005 to the present. PSNH bears the burden of proof, and the focus of the inquiry should not be on CLF. Also this data request is duplicative of many of the other data requests directed to CLF, and to which CLF has objected. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. Also this data request is comprised of multiple questions. 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. In response to fifteen pages of testimony by Dr. Stanton (not including exhibits and attached CV), PSNH has served 176 data requests.

Argument: This is a request for irrelevant information that goes beyond the scope of the issues for determination in this docket. It is also an attempt to impermissibly shift the focus from PSNH's prudence to CLF. See ¶¶ 16-17, 24-25.

34. PSNH states that "the following are some of the topics CLF refuses to address" – "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." *PSNH Mtn to*

Compel CLF at p. 11. Here is CLF's position:

Q-PSNH-77. Please provide copies of any and all documentation that CLF has regarding estimates of newly proposed coal and natural gas combined cycle generating stations in the 2008-2009 time frame.

Objection: 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. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Response: Without waiving the objection, CLF is not in the business of building newly proposed coal and natural gas combined cycles. For an overview of our advocacy, please see <http://www.clf.org/?s=2009+coal+power+plants>.

Argument: CLF has answered this question, and otherwise stands by its objection. This data request is irrelevant to the scope of this docket.

Q-PSNH-78. Please provide copies of any and all documentation in CLF's possession regarding the forward market for natural gas delivered to New England in the 2008 through 2011 time frame.

Objection: 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.

Response: Without waiving the objection and to the extent that this request does seek a valid disclosure of data, CLF has already identified the forward market pricing that Dr. Stanton relied upon in formulating her opinions.

Argument: CLF has answered this question, and otherwise stands by its objection. Dr. Stanton’s pre-filed testimony clearly identifies the forward markets she relied upon in formulating her opinions. Moreover PSNH would have equal or greater access than CLF to the forward market for natural gas. See ¶¶ 16-17, 24 and 26 above.

Q-PSNH-79. Please provide any and all documentation in CLF's possession related to the bus bar costs of power for a new coal or natural gas combined cycle plant in New England during the 2008 to 2012 time period.

Objection: 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.

Response: Without waiving the objection and to the extent that this request does seek a valid disclosure of data, CLF has already identified the information that Dr. Stanton relied upon in formulating her opinions.

Argument: CLF has answered this question, and otherwise stands by its objection. Moreover PSNH would have equal or greater access to the requested information. See ¶¶ 16-17, 24 and 26 above.

35. PSNH states that “the following are some of the topics CLF refuses to address” – “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.’” *PSNH Mtn to Compel CLF at p. 11*. Here is CLF’s position:

Q-PSNH-82. Is it your opinion that a person of requisite skill and experience would deem compliance with applicable law to be a reasonable goal? If not, please explain why not.

Objection: 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. This request is argumentative and is an ultimate question for the Commission not for counsel from CLF. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above.

Q-PSNH-83. Is it your opinion that a highly trained specialist would deem compliance with applicable law to be a reasonable goal? If not, please explain why not.

Objection: 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. This request is argumentative and is an ultimate question for the Commission not for counsel from CLF. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above.

Q-PSNH-84. Does CLF have any requirement, such as but not limited to a corporate compliance program, that mandates compliance with applicable laws? If so, please provide copies of all documents describing such programs.

Objection: 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 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 and “compliance with applicable laws.” For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This request does not seek factual information that will assist the Commission in this docket as it is not designed to elicit information regarding the prudence of PSNH’s decision-making with respect to the scrubber. This request does nothing to get at the facts of the testimony that CLF will present through its witness. This request seeks to make work for CLF to deter it from continuing to intervene in this docket to present evidence to the Commission of a viewpoint different from that of PSNH. See ¶¶16-17, 25. This is also an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above.

Q-PSNH-85. Does CLF contend that the Scrubber Law, RSA 125-O:11 - 18 does not mandate the installation and operation of scrubber technology at Merrimack Station?

Objection: 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. This request is argumentative and seeks an opinion on an issue to which the clear rulings from this Commission hold that the law mandates that the owner of Merrimack Station install the scrubber but does not mandate that PSNH remain the owner of the Station. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above.

Q-PSNH-86. Does CLF contend that installation and operation of scrubber technology at Merrimack Station resulted from a discretionary decision made by PSNH management?

Objection: 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. This request is argumentative and seeks an opinion on an issue to which the clear rulings from this Commission hold that the law mandates that the owner of Merrimack Station install the scrubber but does not mandate that PSNH remain the owner of the Station, and that PSNH retained the discretion to sell or divest itself of the Station. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above.

Q-PSNH-87. Does CLF agree that if a decision had been made to divest Merrimack Station during the 2008 to 2010 time period, the new owner would have been subject to the requirements of the Scrubber Law? If not, explain your answer in full.

Objection: 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. This request is argumentative and seeks an opinion on an issue to which the clear rulings from this Commission does hold that the law mandates that the owner of Merrimack Station install the scrubber but does not mandate that PSNH remain the owner of the Station. The law speaks for itself, and the rulings of this Commission dictate the scope of the prudence inquiry in this case. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above.

Q-PSNH-88. Does CLF contend that if a decision had been made to divest Merrimack Station during the 2008 to 2010 time period, a willing buyer would have been available? If so, please detail the price that CLF believes a reasonable buyer would have offered, an explanation of the foundation for that price, and a statement of any and all conditions to purchase such buyer would reasonably have required.

Objection: 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, impermissibly shift the burden of proof, 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. The rulings of this Commission make clear the PSNH had the ability under existing law to explore selling the Station. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above.

Q-PSNH-89. Does CLF agree that if PSNH had the legal ability to retire Merrimack Station and did so, it would still be the owner of that facility, absent a divestiture? If CLF does not agree, please provide the reasoning for such disagreement. [Note: this question is asked subject to PSNH's pending Motions to Strike. If the Commission rules in PSNH's favor on the relevant Motion, PSNH will withdraw this question].

Objection: 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. This request is argumentative and seeks an opinion on an issue to which the clear rulings from this Commission hold that the law mandates that the owner of Merrimack Station install the scrubber but does not mandate that PSNH remain the owner of the Station, and that PSNH retained the discretion to sell, divest or even to retire the Station. This data request is tantamount to a request for admission which is beyond the scope of the intent of the requests and further does nothing to aid the Commission in its ultimate decision; is PSNH seeking to argue that if it retired the unit and there were zero emissions from it, PSNH would still install a scrubber on the retired unit and seek to recover costs? For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above.

Q-PSNH-90. Is it CLF's position that the Scrubber Law included a not to exceed price of \$250 Million?

- a. If so, please identify with specificity where that not to exceed price is located in the Scrubber Law.
- b. Does CLF agree with the contention that in 2006 the legislature mandated for PSNH to install the scrubber without placing a limit on the costs?
- c. Is it CLF's position that the words of the law itself do not control?

Objection: 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. Moreover this request is argumentative. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. Also this data request is comprised of multiple questions. 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. In response to fifteen pages of testimony by Dr. Stanton (not including exhibits and attached CV), PSNH has served 176 data requests.

Response: Without waiving the objection and to the extent that this request does seek a valid disclosure of data, the position of CLF is set forth in the pre-filed testimony of Dr. Stanton.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above.

Q-PSNH-91. The purpose clause of the Scrubber Law, RSA 125-O:11 finds installation of the scrubber to be in the public interest of the citizens of New Hampshire and the customers of the affected sources; it also refers to the careful and thoughtful balancing of the cost and benefits. CLF discusses some of the costs, but not the potential benefits.

- a. Please provide a listing of all possible "benefits" that the Legislature may have included in the referenced "balancing."
- b. Do you agree that maintenance of a tax base for state and property taxes is such a potential "benefit"? If your response to this question is no, please explain.
- c. Do you agree continued viability of the rail line from Nashua to Concord is such a potential "benefit"? If your response to this question is no, please explain.

- d. Do you agree fuel diversity in electric generation in the region is a potential "benefit"? If your response to this question is no, please explain.
- e. Do you agree reliability of the electric grid in the region is a potential "benefit"? If your response to this question is no, please explain.
- f. Do you agree the lessening of the state's dependence upon other sources of electrical power which may, from time to time, be uncertain is such a potential "benefit"? If your response to this question is no, please explain.
- g. Do you agree the retention in-state of energy expenditures is a potential "benefit"? If your response to this question is no, please explain.
- h. Do you agree the creation of jobs is such a potential "benefit"? If your response to this question is no, please explain.
- i. Do you agree the retention of jobs is such a potential "benefit"? If your response to this question is no, please explain

Objection: 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. Moreover this request is argumentative and seeks information irrelevant to the Commission's determination, i.e. CLF's beliefs are not at issue and many of the requests seek responses to questions that do not elicit information relevant to PSNH's decision-making conduct. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. Also this data request is comprised of multiple questions. 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. In response to fifteen pages of testimony by Dr. Stanton (not including exhibits and attached CV), PSNH has served 176 data requests. Finally this data request is more similar to a request for admission and not a request for data, and is therefore outside the scope of discovery permitted in the November 15, 2013 order.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above.

Q-PSNH-92. Is CLF intending to challenge in any manner the final reports produced by Jacobs Consultancy Inc. which was retained by the NHPUC to monitor and report on PSNH's Clean Air Project at Merrimack Station? If so, please explain and identify in detail all areas of the Jacobs' reports you are challenging.

Objection: 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. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Response: Without waiving the objection and to the extent that this request does seek a valid disclosure of data, the position of CLF required to be disclosed to date is set forth in the pre-filed testimony of Dr. Stanton.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above.

36. PSNH states that "the following are some of the topics CLF refuses to address" – "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." *PSNH Mtn to Compel CLF at p.*

11. Here is CLF's position:

Q-PSNH-93. Does CLF agree that the price of natural gas has historically demonstrated high volatility?

Objection: 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. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above.

Q-PSNH-94. Does CLF agree that economic analyses of the scrubber project performed in the 2008 to 2009 time period would have required educated guesses about what the energy market might be going forward over the subsequent five to

ten years?

Objection: 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. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Response: Without waiving the objection and to the extent that this request does seek a valid disclosure of data, the position of CLF required to be disclosed to date is set forth in the pre-filed testimony of Dr. Stanton.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above. Moreover, CLF provided a limited response that is not intended to waive its objections.

37. PSNH states that "the following are some of the topics CLF refuses to address" – "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."

PSNH Mtn to Compel CLF at p. 11. Here is CLF's position:

Q-PSNH-96. Provide copies of any requests for documents under the Freedom of Information Act related to Merrimack Station or the Scrubber Project during the period 2005 to present that CLF made to any federal agency and all responses received pursuant to those requests.

Objection: 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 impermissibly harass and burden CLF rather than to discover information related to whether PSNH was prudent in its decision-making during the installation of the scrubber which does not encompass the years 2005 to the present. PSNH bears the burden of proof, and the focus of the inquiry should not be on CLF. Also this data request is duplicative of many of the other data requests directed to CLF, and to which CLF has objected. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: As with the other requests, to the extent that this request seeks discoverable evidence, PSNH has waived its argument by failing to properly set forth each request and its argument as to why CLF should be compelled to provide an answer. CLF's conduct is not at issue in this docket and this request will not assist the Commission in deciding the factual issues before it. Moreover this request is overbroad. See e.g. ¶¶ 16-17 and 25 above.

Q-PSNH-97. Did CLF make any requests for documents under RSA 91-A related to Merrimack Station or the Scrubber Project during the period 2005 to present with any agency, instrumentality or municipality of the State of New Hampshire? If so, please provide copies of all such requests and all responses received pursuant to those requests.

Objection: 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 impermissibly harass and burden CLF rather than to discover information related to whether PSNH was prudent in its decision-making during the installation of the scrubber which does not encompass the years 2005 to the present. PSNH bears the burden of proof, and the focus of the inquiry should not be on CLF. Also this data request is duplicative of many of the other data requests directed to CLF, and to which CLF has objected. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: As with the other requests, to the extent that this request seeks discoverable evidence, PSNH has waived its argument by failing to properly set forth each request and its argument as to why CLF should be compelled to provide an answer. CLF's conduct is not at issue in this docket and this request will not assist the Commission in deciding the factual issues before it. Moreover this request is overbroad. See e.g. ¶¶ 16-17 and 25 above.

Q-PSNH-98. Did CLF have any discussions with and state or federal agencies related to Merrimack Station or the Scrubber during the period 2005 to present? If so please provide details of such conversations, including but not limited to

- a. The identity of the agency;
- b. The identity of agency officials who participated in or were present at the discussions;
- c. The dates of those discussions;
- d. The subject matter of those discussions;
- e. The location of those discussions;
- f. The reason for those discussions; and
- g. Copies of all documents produced by CLF at those discussions or received from the agency.

Objection: 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 impermissibly harass and burden CLF rather than to discover information related to whether PSNH was prudent in its decision-making during the installation of the scrubber which does not encompass the years 2005 to the present. PSNH bears the burden of proof, and the focus of the inquiry should not be on CLF. Also this data request is duplicative of many of the other data requests directed to CLF, and to which CLF has objected. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. Also this data request is comprised of multiple questions. 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. In response to fifteen pages of testimony by Dr. Stanton (not including exhibits and attached CV), PSNH has served 176 data requests.

Argument: As with the other requests, to the extent that this request seeks discoverable evidence, PSNH has waived its argument by failing to properly set forth each request and its argument as to why CLF should be compelled to provide an answer. CLF's conduct is not at issue in this docket and this request will not assist the Commission in deciding the factual issues before it. Moreover this request is overbroad. See e.g. ¶¶ 16-17 and 25 above.

38. PSNH states that "the following are some of the topics CLF refuses to address" – "Requests for admission on CLF's positions on "fracking." Nos. 99-102." *PSNH Mtn to Compel CLF at p. 11*. Here is CLF's position:

Q-PSNH-99. What is CLF's position regarding fracking?"

Objection: 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 impermissibly harass and burden CLF rather than to discover information related to whether PSNH was prudent in its decision-making during the installation of the scrubber. PSNH bears the burden of proof, and the focus of the inquiry should not be on CLF. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above. Moreover this request does not relate to the factual scope of this docket. See e.g. ¶¶ 16-17, 24 above.

Q-PSNH-100. What actions has CLF taken to advocate for its position regarding fracking?

Objection: 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 impermissibly harass and burden CLF rather than to discover information related to whether PSNH was prudent in its decision-making during the installation of the scrubber. PSNH bears the burden of proof, and the focus of the inquiry should not be on CLF. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above. Moreover this request does not relate to the factual scope of this docket. See e.g. ¶¶ 16-17, 24 above.

Q-PSNH-101. Does CLF have a reasonable expectation that it will materially impact the production of natural gas by fracking?

Objection: 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 impermissibly harass and burden CLF rather than to discover information related to whether PSNH was prudent in its decision-making during the installation of the scrubber. PSNH bears the burden of proof, and the focus of the inquiry should not be on CLF. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above. Moreover this request does not relate to the factual scope of this docket. See e.g. ¶¶ 16-17, 24 above.

Q-PSNH-102. If there is such a material impact on the production of natural gas, what impact would that have on natural gas prices?

Objection: 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 impermissibly harass and burden CLF rather than to discover information related to whether PSNH was prudent in its decision-

making during the installation of the scrubber. PSNH bears the burden of proof, and the focus of the inquiry should not be on CLF. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above. Moreover this request does not relate to the factual scope of this docket. See e.g. ¶¶ 16-17, 24 above.

39. PSNH states that “the following are some of the topics CLF refuses to address” – “Requests for admission on CLF's position concerning a natural gas fueled generating station in Massachusetts. No. 103.” *PSNH Mtn to Compel CLF at p. 11*. Here is CLF’s position:

Q-PSNH-103. Has CLF taken any position regarding the development of the Footprint natural gas fueled generating station in Salem, Massachusetts? If so, please explain CLF’s position

Objection: 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 impermissibly harass and burden CLF rather than to discover information related to whether PSNH was prudent in its decision-making during the installation of the scrubber. PSNH bears the burden of proof, and the focus of the inquiry should not be on CLF. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Argument: This is an improper request for admission and an improper attempt to elicit further legal characterizations from CLF. See ¶ 25 above. Moreover this request does not relate to the factual scope of this docket. See e.g. ¶¶ 16-17, 24 above.

40. Because PSNH failed to properly and separately set forth its argument to each request to which it seeks to compel a response and for the reasons set forth in ¶¶ 29-39, this Commission should deny PSNH’s Motion to Compel and should award CLF its fees and costs associated with responding to this Motion.

Motion to Compel Further Responses from Dr. Stanton must be denied

41. Likewise, this Commission should deny PSNH’s Motion to Compel further responses from Dr. Stanton. To begin with, this Commission denies Motions to Compel to the

extent that a moving party does not set forth each specific request and offer argument as to why it should be answered. *Freedom Ring Communications, LLC D/B/A Bay Ring Communications, DT 06-067, Order No. 24,789 at p.4 (citing NH Dept of Env Services v. Marino, 928 A.2d 818, 828 (2007))*. PSNH has failed to comply with this rule and therefore has waived its arguments. In addition, PSNH propounded a voluminous number of requests that merely ask the witness to restate her pre-filed testimony or ask her to spend a laborious amount of time re-stating information contained in an Excel spreadsheet that contains 18 cells and 40 pages of data that was submitted with her pre-filed testimony to support the basis for much of her opinions. The detailed questions seek more information than that which a testifying expert in civil trial court would be expected to provide. The objections to these requests should stand; the requests do not seek new information but serve to burden Dr. Stanton and CLF with unnecessary time and expense. Finally, to the extent that PSNH made a cursory attempt to set forth its arguments with respect to some requests, CLF's responses and arguments are contained in the paragraphs below.

42. PSNH states that the answer to the following is inadequate –Request No. 1. PSNH argues: “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.” *PSNH Mtn to Compel CLF at p. 14.*

Here is CLF’s position:

Q-PSNH-1. To the extent not otherwise requested herein, produce your entire file pertaining to this matter, whether in hard copy or electronic form.

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that the file contains privileged work product or is unduly burdensome to produce, not reasonably calculated to lead to admissible evidence or broader than the requirements of RSA 516:29-b.

Response: Without having the objection, Dr. Stanton has produced detailed pre-filed testimony and supporting exhibits, together with her CV.

Argument: The federal rules of civil procedure do not apply and Dr. Stanton is not being deposed. She has produced her EXCEL spreadsheet which shows her analysis related to this docket, has indicated in her pre-filed testimony and her responses to data requests the information that she relied upon in formulating her opinions, and has produced her CV which contains information relevant to her expert status, including the information experts must produce with their civil trial court designations. We have withheld communications with counsel from CLF.

43. PSNH states that the answer to the following is inadequate – Request No. 7.

PSNH argues: “The request asks for Dr. Stanton's experience working with coal plants including working ‘directly with coal plants and/or investment decision making’ and 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.” *PSNH Mtn to Compel CLF at pp. 14-15*. Here is CLF’s position:

Q-PSNH-7. Page 3: Regarding your experience with coal plants:

- a. Describe your experience working directly with coal plant operations and/or investment decision-making.
- b. Provide a detailed summary of your experience with large construction projects, particularly at coal-fired power plants, identifying the type of project, the plant, the cost of construction, the timeframe, and your role.
- c. Please provide a summary of all other site-specific work you have been involved with at coal-fired facilities.

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Response: Without waiving the objection, Dr. Stanton has not worked directly at coal-fired facilities.

Argument: This request asked Dr. Stanton about her experience “working directly with coal plant operations and/or investment decision-making.” Dr. Stanton answered the request as she understood it. Because she has not worked directly with coal-fired power plants, she has no further response to this request.

44. PSNH states that the answer to the following is inadequate –Request No. 8. PSNH argues: “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.” *PSNH Mtn to Compel CLF at p. 15*. Here is CLF’s position:

Q-PSNH-8. Page 4: Have you or Synapse previously testified or provided expert services or reports to CLF? If so, please provide copies of all such testimony and reports. Also, describe any other services provided to CLF by you or Synapse.

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence; CLF also objects to the extent that this request seeks discovery of privileged work product or is impermissibly designed to shift the focus from the burden of proof on PSNH to CLF.

Response: Without waiving the objection, the non-privileged expert reports that Synapse has provided to CLF are available to PSNH via the internet; see response to No. 6.

Argument: Dr. Stanton's CV, provided with her pre-filed testimony, clearly states her prior testimony, including when she has testified for CLF. Her response directs PSNH to Synapse's web page where PSNH can view all reports and choose what it wishes to review or print. If PSNH has difficulty locating the information, it can rely upon the following link:
<http://www.synapse-energy.com/cgi-bin/synapseProjects.pl?ClientName=Conservation+Law+Foundation&ClientType>.

45. PSNH states that the answer to the following is inadequate – Request No. 13.

PSNH argues: “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.”

PSNH Mtn to Compel CLF at p. 15. Here is CLF's position:

Q-PSNH-13. Page 6: Regarding your statement that a prudent utility manager should compare the costs of continued operation of the unit to the cost of providing the same energy services should the unit be retired, explain the phrase in parentheses (“the unit's revenues from the energy and capacity markets”).
[Note: this question is asked subject to PSNH's pending Motions to Strike. If the Commission rules in PSNH's favor on the relevant Motion, PSNH will withdraw this question].

Witness: Dr. Elizabeth Stanton

Response: Dr. Stanton will provide a response if PSNH does not withdraw the question.

Argument: If the Commission wishes, Dr. Stanton will answer this request now. Given the voluminous number and breadth of the requests mostly seeking information already provided by Dr. Stanton or already available on the internet, and the time and expense associated with answering these requests, CLF did not wish to incur further expense for a question PSNH might withdraw.

46. PSNH states that the answer to the following is inadequate – Request No. 19.

PSNH argues: “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.” *PSNH Mtn to Compel CLF at p. 15*. Here is CLF’s position:

Q-PSNH-19. Page 8: Provide New England emissions price forecasts in the 2008/2009 timeframe you relied upon.

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that these forecasts are in the public domain and are equally available to PSNH.

Response: Without waiving the objection, Dr. Stanton relied upon data from PSNH and Synapse.

Argument: As stated, Dr. Stanton relied upon the data provided by PSNH in response to data requests in this docket and analysis prepared by Synapse in a process in which PSNH was a stakeholder- the AESC 2007 Report. See e.g. p. 4, 11-12 of Dr. Stanton’s pre-filed testimony.

47. PSNH states that the answer to the following is inadequate –Request No. 20.

PSNH argues: “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.” *PSNH Mtn to Compel CLF at p. 15*. Here is CLF’s position:

Q-PSNH-20. Page 8: Provide New England capacity price forecasts in the 2008/2009 timeframe you relied upon.

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that these forecasts are in the public domain and are equally available to PSNH. Moreover, Dr. Stanton has already identified the FCM forecasts in her testimony.

Argument: Dr. Stanton’s pre-filed testimony identifies the reports she relied upon. See e.g. p. 4, 11-12 of Dr. Stanton’s pre-filed testimony.

48. PSNH states that the answer to the following is inadequate –Request No. 23.

PSNH argues: “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.” *PSNH Mtn to Compel CLF at pp. 15-16*. Here is CLF’s position:

Q-PSNH-23. Page 9: You state you examined a summary of invoiced expenses incurred by PSNH from April 2004 through April 2012.

- a. In your analysis did you use the pay date of invoices or the receipt date of invoices?
- b. How does your analysis address the timing of the number of outstanding invoiced costs both in the company’s accounts payable system and in the invoicing process of the numerous businesses providing services to the Clean Air Project?
- c. How does your analysis address the indirect costs associated with the project such as AFUDC, labor, which are not “invoiced” but have been incurred as costs of the project.

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. This data request is comprised of multiple questions. 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. In response to fifteen pages of testimony by Dr. Stanton (not including exhibits and attached CV), PSNH has served 176 data requests.

Response: Without waiving the objection, Dr. Stanton relied upon the data provided by PSNH in response to discovery in this docket.

Argument: Once again, PSNH asks a make-work question. It provided the data that Dr. Stanton relied upon. She relied upon the dates and costs PSNH provided.

49. PSNH states that the answer to the following is inadequate – Request No. 24.

PPSNH argues: “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.” *PSNH Mtn to Compel CLF at p. 16*. Here is CLF's position:

Q-PSNH-24. Page 11: You indicate that you have developed an Excel spreadsheet to calculate cash flows. Please provide the Excel spreadsheet with all working formulas and a detailed explanation of all assumptions contained therein.

Witness: Dr. Elizabeth Stanton

Response: See Stanton Exh. 4.

Argument: CLF provided the requested Excel spreadsheet with no redactions. There is nothing else to produce in response to this request. If the Commission refers to Exhibit 4 it will see that it is a voluminous document with 18 cells and 40 pages that contains Dr. Stanton's analysis with many different sub-categories and headings. It is unduly burdensome and unreasonable to require more from Dr. Stanton. To the extent PSNH wishes her to restate her testimony rather than reviewing it, CLF requests that she be reimbursed for her time.

50. PSNH states that the answers to the following are inadequate – Requests Nos. 26 and 27. PSNH argues: “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.” *PSNH Mtn to Compel CLF at p. 16.* Here is CLF's position:

Q-PSNH-26. Page 11: You discuss the information used to produce exhibit 4. You state that the reference case includes FGD. Please identify how the analysis includes the following:

- a. The in-service date.
- b. The assumed emission reduction percentage.
- c. The associated emissions reduction and the associated emission compliance cost reduction.
- d. Did the analysis revise the dollar cost average of the SO₂ allowances to reflect the lesser SO₂ emissions? If yes, provide the calculations. If not, why not?

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. This data request is comprised of multiple questions. 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. In response to fifteen pages of testimony by Dr. Stanton (not including exhibits and attached CV), PSNH has served 176 data requests.

Response: Without waiving the objection, many of PSNH's questions can be answered by examining the EXCEL spread sheet prepared by Dr. Stanton.

Argument: Again PSNH is asking Dr. Stanton to restate her testimony and information that she has previously provided in the Excel spreadsheet with 18 cells and 40 pages of data. To the extent PSNH wishes her to restate her testimony rather than reviewing it, CLF requests that she be reimbursed for her time.

Q-PSNH-27. Page 11: You discuss the information used to produce exhibit 4. You state the analysis includes the installation of an Activated Carbon Injection. Associated with this assumption, please provide the following:

An itemization of the total \$7M capital cost associated with the installation on each unit.

The operating and maintenance costs associated with the installation of these technologies on each unit.

All support for the \$1.37M in operating costs per year.

What emission reductions are assumed associated with the O&M costs identified in above?

What compliance requirement was referenced to determine the emission reduction selected for the analysis and provided above?

Please provide all documentation supporting your responses.

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. This data request is comprised of multiple questions. 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. In response to fifteen pages of testimony by Dr. Stanton (not including exhibits and attached CV), PSNH has served 176 data requests.

Response: Without waiving the objection, many of PSNH's questions can be answered by examining the EXCEL spread sheet prepared by Dr. Stanton.

Argument: Again PSNH is asking Dr. Stanton to restate her testimony and information that she has previously provided in the excel spreadsheet with 18 cells and 40 pages of data. To the extent PSNH wishes her to restate her testimony rather than reviewing it, CLF requests that she be reimbursed for her time.

51. PSNH states that the answer to the following is inadequate –Request No. 32a. PSNH argues; “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.” *PSNH Mtn to Compel CLF at p. 16.* Here is CLF's position:

Q-PSNH-32. Pages 13-14: Regarding your discussion of the “five scenarios analyzed” that “represent a range of possible future assumptions regarding gas prices and environmental control requirements from the point of view of a prudent manager in March 2009:”

- a. Provide a qualitative description of the “state of the world” that serves as a rational basis for the development of each of the five scenarios.
- b. Is it your position that gas prices and environmental control requirements are independent parameters? Please explain.
- c. It is implicit in your suggestion that the scenarios reflect a “range of likely future net benefits from Merrimack Station in the event that the scrubber was constructed” that it has a perspective on the probabilities of occurrence of each scenario. Please provide a probability estimate for each of the five scenarios that is consistent with the analysis conducted in this testimony.

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. This

data request is comprised of multiple questions. 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. In response to fifteen pages of testimony by Dr. Stanton (not including exhibits and attached CV), PSNH has served 176 data requests.

Response: Without waiving the objection, the form of analysis used in my testimony does not take a “perspective on the probabilities of occurrence of each scenario” but rather is designed to explore the range of possible outcomes. Knowledge regarding the relative probability of future scenarios is difficult to obtain and fraught with uncertainties. The unpredictability of future events is not an excuse for failing to explore the scale of worse case outcomes and to present whatever is known about uncertain outcomes to decision makers and other stakeholders.

Argument: Dr. Stanton answered the question as she understood it. Her response in part addresses the fallacy of the assumptions made in subquestion a and subquestion c. Please see pp. 13 -14 of her testimony and the referenced exhibits which explain this in greater detail.

52. PSNH states that the answer to the following is inadequate –Request No. 33.

PSNH argues: “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.” *PSNH Mtn to Compel CLF at p. 16*. Here is CLF’s position:

Q-PSNH-33. Page 14: You state that these scenarios are “typical of how a utility should project future cashflow”.

- a. Provide examples of where you have projected cashflow for a utility in this manner.
- b. Provide any authoritative references supporting your assertion that this is typical of how a utility should project future cashflow.

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. This

data request is comprised of multiple questions. 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. In response to fifteen pages of testimony by Dr. Stanton (not including exhibits and attached CV), PSNH has served 176 data requests.

Response: Without waiving the objection, Synapse is routinely called upon to assess the work that utilities have done.

Argument: This is a very broad question given the work that Synapse performs. See e.g. <http://www.synapse-energy.com/clients/>. See also Stanton pre-filed testimony at 2-3 which summarizes her prior work.

53. PSNH states that the answers to the following are inadequate –Requests 35-40. PSNH argues: “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.” *PSNH Mtn to Compel CLF at p. 17.* Here is CLF’s position: First, it is extremely difficult to respond to this general cobbled together argument and the Motion to Compel with respect to Requests 35-40 should be denied for that reason. *See ¶ 26 above.* In addition:

Q-PSNH-35. Page 15: You testify that the “assumptions represented in the Reference Case are what a prudent manager would have considered most likely in

March 2009”. Explain why each of the specific cost components and assumptions behind the Exhibit 4 spreadsheet is “most likely”.

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Response: Without waiving the objection, the answer to much of this question is contained in Dr. Stanton’s pre-filed testimony.

Argument: Again, Exhibit 4 is a voluminous spreadsheet with 18 cells and 40 pages of data that fully sets forth all categories and Dr. Stanton’s analysis. To ask her to re-explain “each of the specific cost components” is an attempt to make work for this expert and to increase significantly the costs of CLF participating in this docket. CLF has provided the Excel spreadsheet and detailed information from Dr. Stanton through her pre-filed testimony. To the extent that PSNH wishes her to restate her testimony, it should be required to compensate her for her time.

Q-PSNH-36. Pages 15-16: Please provide the complete basis for your opinion that it would have been economically prudent for PSNH to consider retirement and/or divestiture for Merrimack in early 2009. Please explain, in detail, what you think would have occurred if PSNH had chosen to pursue either or both of those strategies.

[Note: this question is asked subject to PSNH’s pending Motions to Strike. If the Commission rules in PSNH’s favor on the relevant Motion, PSNH will withdraw this question].

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. Moreover this question asks Dr. Stanton to speculate and mischaracterizes her testimony which is that PSNH had a duty to investigate these two scenarios at that point in time and to model them then.

Response: Without waiving the objection and to the extent that a response is required, Dr. Stanton’s opinion that PSNH should have considered retirement is set forth in her pre-filed testimony.

Argument: Again PSNH is asking Dr. Stanton to restate her testimony. The complete basis for her opinion is set forth in her testimony and the accompanying exhibits. To the extent that PSNH wishes her to restate her testimony, it should be required to compensate her for her time.

Q-PSNH-37. Page 16: Please provide the basis for the conclusion that only PSNH's sunk costs, as of March 2009, are recoverable as prudently incurred costs.

Does this opinion include any consideration of the benefits that the continued ownership and operation of Merrimack has produced for PSNH customers since March 2009?

If it does, please provide all such analysis.

If it does not, please explain why you did not include any consideration of such benefits.

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. This data request is comprised of multiple questions. 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.

Response: Without waiving the objection, please see Dr. Stanton's pre-filed testimony.

Argument: Again PSNH is asking Dr. Stanton to restate her testimony. The complete basis for her opinion is set forth in her testimony and the accompanying exhibits. To the extent that PSNH wishes her to restate her testimony, it should be required to compensate her for her time.

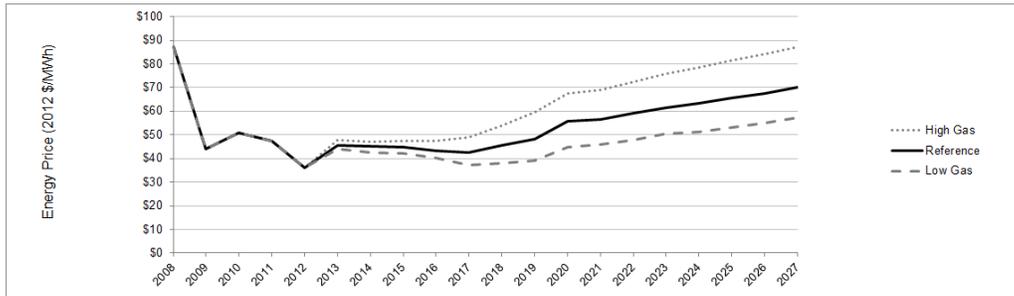
Q-PSNH-38. Page 29: You show three energy price forecasts, including a "reference" forecast, a "high gas" forecast and a "low gas" forecast.

- a. Explain why your reference natural gas price forecast appears to have higher natural gas prices than your high natural gas price forecast for a number of years over the relevant time period.
- b. Explain why your reference natural gas price forecast appears to have natural gas prices as low as your low natural gas price forecast over the relevant time period.

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. This data request is comprised of multiple questions. 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.

Response: Without waiving the objection and to the extent that this request does not ask for information already contained in Dr. Stanton’s pre-filed testimony, the figure below (reproduced from Stanton Exhibit 4) shows the high, reference, and low gas prices used to produce my testimony. The high gas prices appear to be higher than the reference gas prices and the low gas prices appear to be lower than the reference gas prices throughout the study period.



Argument: Dr. Stanton has answered the question.

Q-PSNH-39. Page 37: You show “Total Project Costs” for various environmental controls.

- a. How were these costs estimated?
- b. Are these costs in present value terms?
- c. If so, what discount rate was used? If not, why not?

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. This data request is comprised of multiple questions. 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.

Response: Without waiving the objection, please refer to Stanton Exh. 4, the EXCEL spreadsheet.

Argument: Again, PSNH is asking Dr. Stanton to restate her testimony. CLF has provided the Excel spread and detailed information from Dr. Stanton through her pre-filed testimony. To the extent that PSNH wishes her to restate her testimony, it should be required to compensate her for her time.

Q-PSNH-40. Page 37: For the “low” environmental controls scenario, you estimate “Wet Cooling Tower Capital Costs” of \$0.51 million for Unit 1 and \$1.35 million for Unit 2.

- a. Are these costs of wet cooling towers or of impingement controls, as indicated on page 30?
- b. What is the basis for these cost estimates?

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. This data request is comprised of multiple questions. 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.

Response: Without waiving the objection, please refer to Stanton Exh. 4, the EXCEL spreadsheet.

Argument: Again, PSNH is asking Dr. Stanton to restate her testimony. CLF has provided the Excel spread and detailed information from Dr. Stanton through her pre-filed testimony. To the extent that PSNH wishes her to restate her testimony, it should be required to compensate her for her time.

54. PSNH states that the answers to the following are inadequate –Requests 59 and 60. PSNH argues: “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.” *PSNH Mtn to Compel CLF at p. 17.* Here is CLF’s position:

Q-PSNH-59. In Exhibit 4, page 12, please provide all back up for the FGD O&M costs of \$3.91M (Merrimack Unit 1 equal to \$1.86M and Merrimack Unit 2 equal to \$2.05M).

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that this request is confusing and unclear or is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. The corrected Exh. 4 is an EXCEL spreadsheet without page numbers.

Response: Without waiving the objection, as cited in Stanton Exhibit 4, the sources for these data assumptions are EIA 860 2012, EIA 923 2012, EPA IPM v4.1 Appendix 5-1a (Sargent & Lundy), EPA IPM v4.1 Appendix 5-2a (Sargent & Lundy), EPA IPM v4.1 Appendix 5-5 (Sargent & Lundy), EPA IPM v4.1 Appendix 5-3 (Sargent & Lundy), EPA Technical Development Document for 316(b), 2010 EPRI Cost Assessment of Coal Combustion Residuals, 2011 EEI Potential Impacts of Environmental Regulation, 2010 EPRI Cost Assessment of Coal Combustion Residuals, 2011 EEI Potential Impacts of Environmental Regulation, and EPA Effluent Limitations Guidelines 2013.

Argument: The witness has answered the question. To require an expert witness to identify each and every page that she reviewed would add a considerable burden far in excess of what is required of testifying expert witnesses in civil trial practice. Moreover, there is no language in this request asking her to do so.

Q-PSNH-60. Exhibit 4 and 6 provide the analysis's "Environmental Retrofit Assumptions". Please provide all documentation and back-up for the following:

- a. Capital costs, installation assumptions and associated O&M costs for "Baghouse", including costs for each unit. Please explain its use in the analysis given that under all scenarios the assumption is none.
- b. Capital cost, installation assumptions and associated O&M costs for "ACI", including detailed costs for each unit.
- c. Capital costs, installation assumptions and associated O&M costs for "Cooling", including detailed costs for each unit. Specifically detail the low case amount of \$1.86M, the reference case of \$28.94M and the high case of \$39.14M.
- d. Capital costs, installation assumptions and associated O&M costs for "Coal Combustion Residuals", including detailed costs for each unit.
- e. Capital costs, installation assumptions and associated O&M costs for "Effluent", including detailed costs for each unit.

Witness: Dr. Elizabeth Stanton

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. This data request is comprised of multiple questions. 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. Also, the corrected Exh. 4 is an EXCEL spreadsheet without numbers.

Response: Without waiving the objection, as cited in Stanton Exhibit 4, the sources for these data assumptions are EIA 860 2012, EIA 923 2012, EPA IPM v4.1 Appendix 5-1a (Sargent & Lundy), EPA IPM v4.1 Appendix 5-2a (Sargent & Lundy), EPA IPM v4.1 Appendix 5-5 (Sargent & Lundy), EPA IPM v4.1 Appendix 5-3 (Sargent & Lundy), EPA Technical Development Document for 316(b), 2010 EPRI Cost Assessment of Coal Combustion Residuals, 2011 EEI Potential Impacts of Environmental Regulation, 2010 EPRI Cost Assessment of Coal Combustion Residuals, 2011 EEI Potential Impacts of Environmental Regulation, and EPA Effluent Limitations Guidelines 2013.

Argument: The witness has answered the question. To require an expert witness to identify each and every page that she reviewed would add a considerable burden far in excess of what is required of testifying expert witnesses in civil trial practice. Moreover, there is no language in this request asking her to do so. Moreover, there is no language in this request asking her to do so.

55. For all of the foregoing reasons, this Commission should deny the Motion to Compel with respect to the requests directed at Dr. Stanton.

Conclusion

56. WHEREFORE, CLF respectfully requests that that Commission:

- a. Deny the Motion to Rescind Intervenor Status;
- b. Deny the Motion to Compel; and
- c. Grant such further relief, including an award of costs as this Commission deems just and proper.⁵

⁵ CLF seeks recovery of costs pursuant to RSA 365:38-a, which permits the Commission to award just and reasonable costs deemed to be in the public interest to other parties that participate in utility proceedings. “Other parties” are defined as retail customers that are subject to the rates of the utility and who demonstrate financial hardship. CLF’s membership includes retail customers of PSNH. CLF’s participation in this docket is representative of those members’ interests.

Dated: March 3, 2014

Respectfully submitted,

CONSERVATION LAW FOUNDATION

By: 

N. Jonathan Peress

By: 

Ivy L. Frignoca

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of March 2014, a copy of the foregoing Objection was sent electronically or by First Class Mail to the service list.



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