

THE STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DE 11-250

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Investigation of Merrimack Station Scrubber Costs and Cost Recovery

**OBJECTION BY THE OFFICE OF THE CONSUMER ADVOCATE
TO THE MOTION TO COMPEL OF PUBLIC SERVICE COMPANY OF NEW
HAMPSHIRE REGARDING DATA REQUESTS**

NOW COMES the Office of the Consumer Advocate (OCA), and objects to the Motion to Compel of Public Service Company of New Hampshire filed on February 19, 2014 in the above-captioned docket. The OCA respectfully moves this Honorable Public Utilities Commission (Commission or PUC) to uphold the OCA's objections to PSNH data requests 83-89, 93, 94, 103 and 104 filed on January 16, 2014. In support of this objection and motion, the OCA states:

1. This docket considers the prudence of the costs and cost recovery for the wet flue gas desulfurization system (Scrubber) installed by Public Service Company of New Hampshire (PSNH) at its coal fired generator known as Merrimack Station. Re *PSNH Investigation of Merrimack Station Scrubber Costs and Cost Recovery*, DE 11-250, Order No 25,506 (May 9, 2013) at 1. The subject of this adjudication is whether PSNH acted prudently in incurring the costs of installing the Scrubber. The Commission will also review to what extent the Scrubber is used and useful and whether the

resulting rates from any allowable ratebase increase are reasonable pursuant to RSA 378:7 and 378:28.

2. On January 16, 2014 PSNH filed one hundred nine numbered data requests, directed to OCA expert witnesses Matthew Kahal and Stephen Eckberg, and to the OCA office in general.
3. The standard for addressing motions to compel discovery responses is as follows:

The Commission considers whether the information being sought is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. *See, Investigation into Whether Certain Calls are Local*, Order No. 23,658 (2001) at 5. “[I]n general, discovery that seeks irrelevant or immaterial information is not something we should require a party to provide.” *City of Nashua*, Order No. 24,681 (2006) at 2... We review the motions and the objections in light of these principles and the statutory directive in RSA 125-O:18 that PSNH “shall be allowed to recover all prudent costs of complying with the requirements of the [mercury emissions] subdivision in a manner approved by the public utilities commission.” *Id. Order No 25,445* (Dec 24, 2012).

4. For data requests # 83-89 and 93, PSNH argues that the Commission Order granting TransCanada’s motion to compel PSNH to answer similar questions is sufficient support for the Commission to grant its motion against the OCA. *See Order No 25,398* (August 7, 2012). This assumption is a misreading of the Commission’s order. In relevant part, the order states: “The responses to this data request could shed light on PSNH’s position regarding RSA 125-O:17 or other provisions of the Scrubber law, and could produce information relevant to the prudence review.” *Order 25,398* (August 7, 2012) at 14. The order addresses PSNH’s position on RSA 125-O:17. It is PSNH’s position

which is relevant to the prudence review, not that of the OCA or other parties.

5. PSNH's assumption also misconstrues New Hampshire statutes on utility ratemaking. Pursuant to RSA 378:8, the public utility – in this case PSNH- has the burden of demonstrating why it is entitled to an increase in rates. (“When any public utility shall seek the benefit of any order of the commission allowing it to charge and collect rates higher than charged at the time said order is asked for, the burden of proving the necessity of the increase shall be upon such applicant.”) Therefore PSNH is in a fundamentally different statutory posture during an adjudicative proceeding than the OCA. PSNH is requesting a rate increase driven by the Scrubber-related investments in ratebase. It is PSNH that must meet the burden of demonstrating the prudence of its actions, which is why PSNH activity is relevant to the proceeding and the activity of the OCA is not.
6. Pursuant to RSA 363:28 the OCA is an administrative agency created to represent the interests of residential ratepayers (“...the consumer advocate shall have the power and duty to petition for, initiate, appear or intervene in any proceeding concerning rates, charges, tariffs, and consumer services before any board, commission, agency, court, or regulatory body in which the interests of residential utility consumers are involved and to represent the interests of such residential utility consumers.”) It is the OCA's statutory responsibility to take positions to advance residential consumer interests related to utility rates.

7. The difference between a utility seeking a rate increase and an administrative agency representing consumer interests extends to the respective relevance for this proceeding of actions by a utility representative compared to those of an agency representative. Simply because the PUC found data requests about PSNH's actions to be relevant or likely to lead to relevant evidence does not mean that the same or similar data requests about actions of the OCA are also relevant.
8. Regarding data requests # 83-84, the actions of the OCA regarding mercury reduction legislation in 2006 have no bearing on the prudence of PSNH in incurring \$430 million of Scrubber costs. Such actions, if any, by the OCA were done to further the OCA's statutory duty to represent consumer interests and are neither relevant nor likely to lead to the discovery of relevant information in this proceeding.
9. Regarding data requests # 85-86 and 94, documents provided to the legislature or individuals hired by the OCA regarding SB 152 and HB 496 in 2009 have no bearing on the prudence of PSNH in incurring \$430 million of Scrubber costs. Such documents or individual's actions, if any, are neither relevant nor likely to lead to the discovery of relevant information in this proceeding, for the reasons stated above.
10. Regarding data requests #87-89, communication of any sort between the OCA and other state and federal regulatory entities has no bearing on the prudence of PSNH in incurring \$430 million of Scrubber costs. Such communication, if any, by the OCA was done to further the OCA's statutory

duty to represent consumer interests and is neither relevant nor likely to lead to the discovery of relevant information in this proceeding.

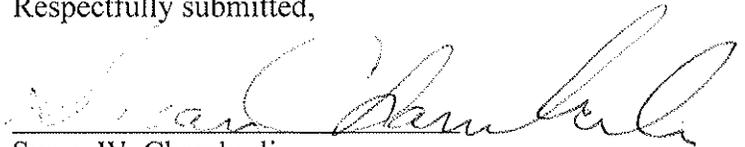
11. Regarding data request #93, participation before the legislature by the OCA regarding HB 1673 in 2006, if such participation took place, has no bearing on the prudence of PSNH in incurring \$430 million of Scrubber costs. Such participation, if any, was done to further the OCA's statutory duty to represent consumer interests and is neither relevant nor likely to lead to the discovery of relevant information in this proceeding.
12. Regarding data request #103, PSNH attempts to shift the burden of proof in supporting its request for a rate increase related to the inclusion of \$430 million of scrubber-related investment in its rate base from PSNH to the OCA by seeking the OCA's interpretation of RSA 125-O:11 on the public benefit of the Scrubber project. As stated repeatedly in Commission orders throughout this proceeding, the public benefit determination is not before the Commission. ("...we impress upon the parties that the purpose of this proceeding is to investigate the costs, and PSNH's prudence in incurring the costs, in connection with the construction and operation of the Scrubber." *Re PSNH Investigation of Merrimack Station Scrubber Costs and Cost Recovery*, DE 11-250, Order No 25,361 (May 11, 2012). OCA witness speculation about the possible benefits is neither relevant nor likely to lead to the discovery of relevant information in this proceeding.
13. Regarding data request #104, the OCA intends to exercise its statutory authority to cross examine the witness submitting the Jacobs Consultancy

report to test the accuracy of the report's conclusions. This general statement, which reflects the OCA's statutory duty in representing consumer interests, is submitted in answer to data request #104.

WHEREFORE, the OCA respectfully requests that this honorable Commission:

- A. Grant the OCA's Objection to PSNH Motion to Compel Responses to Data Requests 83-89, 93,103 and 104 filed on February 19, 2014;
- B. Grant such other relief as may be just and equitable.

Respectfully submitted,

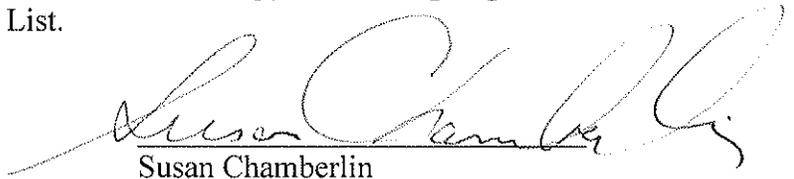


Susan W. Chamberlin
Consumer Advocate
Office of the Consumer Advocate
21 South Fruit Street, Suite 18
Concord, NH 03301
(603) 271-1174
Susan.chamberlin@oca.nh.gov

March 3, 2014

Certificate of Service

I hereby certify that on this 3 day of March, 2014 a copy of the foregoing motion was sent by electronic mail to the Service List.



Susan Chamberlin