

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

Public Service Company of New Hampshire

Docket DE 11-250

**Objection**  
**of**  
**Public Service Company of New Hampshire**  
**to**  
**OCA's Motion to Compel**

Pursuant to N.H. Code Admin. Rules Puc § 203.07(e), Public Service Company of New Hampshire ("PSNH" or the "Company") hereby objects to the Office of Consumer Advocate's ("OCA") Motion to Compel dated August 7, 2014.

1. Per the procedural schedule in effect for this docket issued on May 16, 2014, "Discovery on Rebuttal [Testimony]" had to be served on PSNH by July 25, 2014.
2. On July 25, 2014, PSNH received hundreds of data request questions from TransCanada, Conservation Law Foundation/Sierra Club, and the OCA
3. In accordance with Rule Puc 203.09 (g) requiring objection to data requests to be served in writing on the propounder of the requests within 10 days following receipt of the request, on August 4, 2014, PSNH served its objections to certain questions, including objections to two questions submitted by OCA.
4. Per the procedural schedule, responses to discovery were due on August 8, 2014. PSNH timely filed its responses.

5. Prior to receiving PSNH's discovery responses, the OCA filed its Motion to Compel, seeking responses to the two questions from it to which PSNH had submitted objections, questions Q-OCA-06-001 and 06-004. PSNH's objections to these questions are set forth in full in OCA's Motion. PSNH incorporates those objections herein.
6. Contrary to Rule Puc 203.09(i)(4), OCA's Motion does not "Certify that the movant has made a good-faith effort to resolve the dispute informally." In fact, no such effort was undertaken.
7. If, instead of filing a Motion to Compel, OCA had made the required good faith effort, it would have learned that notwithstanding its objections thereto, PSNH had decided to provide responses to both Q-OCA-06-001 and Q-OCA-06-004, notwithstanding and subject to the Company's objections. Thus, OCA's objection appears to be moot.
8. Similarly, OCA did not attend the Discovery Technical Session held today (August 18) where issues such as those contained in OCA's Motion to Compel were discussed. As a result, OCA was not present to indicate whether or not its Motion to Compel was indeed rendered moot by the fact that PSNH provided responses to the two questions in issue. Subsequent to the Technical Session, PSNH contacted the OCA's office to determine the status of its Motion to Compel, but appropriate members of OCA's staff were not available to comment.
9. Under Rule 203.07(e), any objection to OCA's motion had to be filed by today; hence, PSNH is filing this objection, since the status of the OCA Motion cannot be determined.
10. In Q-OCA-06-001, OCA asked about legal costs incurred regarding the Scrubber. As noted in paragraph 1, *supra*, the Commission had directed that discovery at this point in the proceeding was limited to "Discovery on Rebuttal." OCA's Q-OCA-06-001 does not

identify nor pertain to anything included in PSNH's rebuttal testimony. As the numbering of the question indicates, OCA has asked five prior sets of discovery during which it could have asked this question. It did not. Notwithstanding and without waiving the Company's objection, PSNH provided a response to this question. See Attachment 1.


11. Similarly, in Q-OCA-06-004, OCA asked whether there was a "price point" for the cost of the Scrubber beyond which PSNH would have notified regulators that the project was not worth pursuing. As PSNH's objection to this question (set forth in OCA's Motion) noted, this question is hypothetical and requires speculation; it also impinges on the authority of the Legislature to legislate – as this Commission has ruled in Order No. 25,566, "PSNH is not responsible for the Legislature's actions, nor for ours [the Commission's]." Notwithstanding and without waiving the Company's objection, PSNH provided a response to this question. See Attachment 2.
12. In light of the facts set forth above, it appears that OCA's Motion to Compel may be moot and should have been withdrawn. To the extent the Motion is not moot, PSNH has responded to the questions.

**WHEREFORE**, PSNH objects to OCA's Motion to Compel. The motion appears to be moot. PSNH has responded to the questions (subject to its objection). If OCA is unhappy with those responses, its motion fails to demonstrate why PSNH's objections should be overruled.

For the reasons expressed herein, PSNH respectfully requests that the Commission deny OCA's Motion to Compel.

Respectfully submitted this 18th day of August, 2014.

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

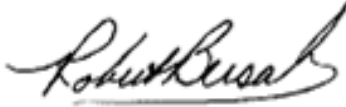
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### **CERTIFICATE OF SERVICE**

I hereby certify that on August 18, 2014, I served an electronic copy of this filing with each person identified on the Commission's service list for this docket pursuant to Rule Puc 203.02(a).



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# Attachment 1

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

**Date Request Received: 07/25/2014**

**Request No. OCA 6-001**

**Request from: Office of Consumer Advocate**

**Date of Response: 08/14/2014**

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**Witness: Eric H. Chung**

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## **Request:**

Please explain how legal costs related to PSNH's Scrubber litigation process are being booked. Are the costs being expensed or capitalized? Is there any difference in the treatment of these expenses since Temporary Rates have been in effect? Please provide a schedule detailing outside legal costs related to the scrubber since the inception of the project.

## **Response:**

PSNH has objected to this question. Notwithstanding and without waiving its objection to this question, PSNH is providing the following response:

The treatment of legal costs related to the Scrubber was an issue discussed in the Audit Reports conducted by Commission Staff.

The procedural schedule issued by the Commission on August 6, 2013, set a deadline of August 30, 2013, for the issuance of data requests pertaining to the Staff Audit.

In the Audit Staff's August 23, 2013 "Final Audit Report," it is noted that certain legal costs were charged to the Scrubber capital project, and others have been expensed.

There has been no difference in the treatment of these costs since the issuance of the Staff Audit Report.

Legal costs charged to the Scrubber Project total \$815,576.68 to date and are related to services pertaining to Air Resources Council proceedings relating to the Temporary Permit issued by NHDES; federal environmental challenges regarding the Scrubber Project; appeals to the New Hampshire Supreme Court related to the Scrubber Project; and, the Site Evaluation Committee's proceeding regarding the Scrubber Project.

## Attachment 2

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

**Date Request Received: 07/25/2014**  
**Request No. OCA 6-004**  
**Request from: Office of Consumer Advocate**

**Date of Response: 08/08/2014**  
**Page 1 of 1**

**Witness: William H. Smagula**

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**Request:**

Reference Smagula Rebuttal at page 7 of 65 lines 6-9. Is it Mr. Smagula's position that the "requirement" to install the scrubber at Merrimack Station was one that should proceed at any cost? Was there a "price point" beyond which PSNH would have notified regulators that "this is not worth the investment?"

**Response:**

Please see PSNH's objection to this question. Notwithstanding and without waiving that objection, PSNH is providing the following response:

This question asks for an answer to a hypothetical question. The economic analyses performed by PSNH based on the project's \$457 million estimated cost indicated that the scrubber would provide benefits to customers. The Legislature, having full knowledge of the project's \$457 million estimated cost, stated that it did not want the project cancelled or paused. As the project progressed, the estimated cost of the project dropped from the \$457 million price tacitly deemed acceptable by the Legislature. Thus, there was never a need to consider determination of any such "price point" as referred to in this question.