

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
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE MOTION IN LIMINE
TO STRIKE PORTIONS OF PREFILED TESTIMONY RELATING TO
THE 'USED AND USEFUL' RATEMAKING CONCEPT
AND
REQUEST TO TAKE ADMINISTRATIVE NOTICE
PURSUANT TO PUC 203.27(2)**

NOW COMES the Office of the Consumer Advocate (“OCA”), and respectfully moves this Honorable Commission deny Public Service Company of New Hampshire’s (PSNH) Motion in Limine to Strike Portions of Prefiled Testimony Relating to the “Used and Useful” Ratemaking Concept (PSNH Motion). In support of this Objection, the OCA states:

1. On September 10, 2014 PSNH filed the PSNH Motion identified above. In it PSNH attempts to recharacterize the portions of Rebuttal testimony which were properly stricken from the record by Commission Order No 25,714 (September 8, 2014). PSNH argues that the stricken testimony identified by Mr. Smagula as public interest testimony is actually testimony on the “used and useful” standard. (“However, I can suggest additional reasons why installation of the scrubber was in the public interest.” Bates p 21 lines 11-12).

PSNH Motion at 2. PSNH argues that if Mr. Smagula's so-called "used and useful" testimony was stricken, then the OCA's "used and useful" testimony must also be stricken. Id.

2. The attempted recharacterization of Mr. Smagula's Rebuttal testimony is a false rationale for PSNH's Motion. As stated in the OCA's original Objection to PSNH Motion to Strike Testimony Relating to the Used and Useful Ratemaking Concept, PSNH's own expert testimony uses the "used and useful" ratemaking standard. See Joint Testimony of Baumann and Smagula, PSNH *In Re Investigation of Scrubber Costs and Cost Recovery* DE 11-250 (November 18, 2011) p 1 line 15. The used and useful principle is a long standing element of ratemaking that the Commission is required to consider in determining permanent rates. See RSA 378:27 and RSA 378:28. Therefore the OCA's testimony is properly included in this docket.
3. For factual data, as opposed to opinion, regarding the scrubber, the OCA requests the Commission take administrative notice, pursuant to Puc 203.27(2) of Mr. Smagula's testimony and attachments in DE 14-120 Annual Reconciliation of Energy Service and Stranded Cost for 2013, filed May 1, 2014. This testimony with attachments provides factual data on the "used and useful" portion of the Merrimack plant. It does not discuss the "public interest" determination or irrelevant legislative history. To the extent the Commission requires operational data on the Merrimack plant and the scrubber, this PSNH testimony provides relevant information on operation

statistics. It predates the Rebuttal testimony, making the stricken sections of Mr. Smagula's testimony redundant, in addition to being irrelevant.

4. The OCA repeats the relevant sections of its previous Objection to PSNH Motion to Strike (January 10, 2014), incorporated below for ease of reference.
5. The "used and useful" ratemaking concept is not new, as alleged in the original PSNH's Motion to Strike at p1. On the contrary, the used and useful principle is a long standing element of ratemaking that the Commission is required to consider in determining permanent rates. The New Hampshire legislature originally enacted the statutes incorporating the principle, RSA 378:27 and RSA 378:28 in 1941 and 1951, respectively.
6. The New Hampshire Supreme Court holds the "used and useful" concept as a key element of ratemaking:

The second principle of rate base inclusion or exclusion derives directly from the statutory description of allowable rate base property as "used and useful." *RSA 378:27, :28*. Here again, there is no simple formulation that describes the standard of usefulness, *Bluefield Co. v. Pub. Serv. Comm.*, 262 U.S. at 690-91, 43 S.Ct. at 678; *New Eng. Tel. & Tel. Co. v. State*, 98 N.H. at 218-19, 97 A.2d at 219. Prior case law has invested the commission with flexibility in determining what may qualify as used and useful, *LUCC*, 119 N.H. at 343-44, 402 A.2d at 633-34, [507 A.2d 674] thus necessarily providing scope for policy judgments.

Appeal of Conservation Law Foundation of New England, Inc., 507 A.2d 652, 127 N.H. 606, 637 (N.H. 1986).

7. Federal case law is replete with references to "used and useful." See *Hope Natural Gas* 320 U.S. 591 (1944); *Bluefield Waterworks* 262 U.S. 679 (1923); *Duquesne Light Co* 488 U.S. 299 (1989). The Commission is the authority which determines how and to what extent the used and useful ratemaking standard applies in this proceeding.

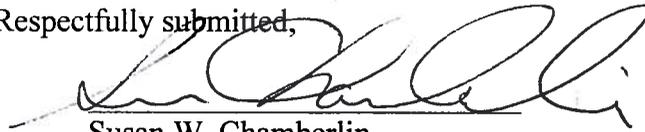
8. Staff's testimony also includes the "used and useful" ratemaking standard. See Testimony of Steve Mullen, DE 11-250 PSNH *In Re Investigation of Scrubber Costs and Cost Recovery* (December 23, 2013) p 28 line 23. The prevalence of this standard in testimony, state law, common law and federal law demonstrates the fundamental nature of the concept.
9. Mr. James Brennan, Finance Director of the Office of the Consumer Advocate, is adopting the testimony of Mr. Eckberg. Attached are his qualifications.

WHEREFORE, the OCA respectfully requests that this honorable Commission:

- A. Deny PSNH's Motion in Limine to Strike Portions of OCA Prefiled Testimony Relating to the "Used and Useful" Ratemaking Concept;
- B. Take administrative notice of Mr. Smagula's testimony and attachments in DE 14-120 Annual Reconciliation of Energy Service and Stranded Cost for 2013, filed May 1, 2014;
- C. Accept the OCA prefiled testimony and attachments as now sponsored by Mr. James Brennan, Finance Director of the Office of the Consumer Advocate in its entirety; and

D. Grant such other relief as may be just and equitable.

Respectfully submitted,

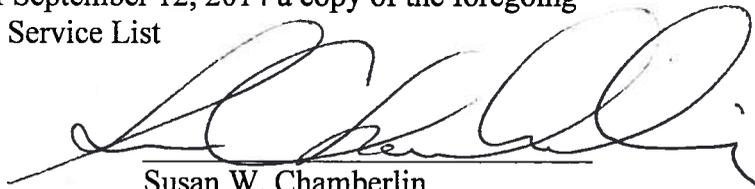


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September 12, 2014

Certificate of Service

I hereby certify that on this day of September 12, 2014 a copy of the foregoing motion was sent by electronic mail to the Service List



Susan W. Chamberlin

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James Brennan, Finance Director
Office of the Consumer Advocate
Qualifications

I graduated in 1978 from Saint Bonaventure with a Bachelor of Science degree in Finance. In 1980, I graduated from Syracuse University with an MBA. In 1981, I completed a nine month Chemical Bank (now JP Morgan Chase) MBA Management Training Program and was ranked third in my class. In private industry I have completed numerous courses in business, finance, software development, electric utility regulation, and Smart Grid.

In my present position at the OCA I perform economic and financial analysis of utility filings across all industries, participate in dockets, draft discovery and testimony, and provide guidance on financial policy and regulatory issues. I have testified before the NH Public Utilities Commission in two dockets. In docket 13-177 PSNH 2013 Least Cost Integrated Resource Plan I testified and recommended modifications to PSNH's long term strategic planning process to include smart grid technologies. In 2010 docket DE 10-055 Unitil Energy System Petition for Base Rate Increase I submitted pre-filed testimony evaluating Unitil's Smart Grid projects, deployment of advanced metering technologies and overall strategy.

My business career began in banking as First Vice President at Chemical Bank, 1980-1989, with responsibilities as analyst, credit department manager, account office managing client relationships, and course designer and instructor of Risk Assessment training. I have experience managing business and technology operations. At TD

Waterhouse Securities, 1995-2001, I ran the third largest brokerage statement operation on Wall Street during a period of 400% growth with responsibilities for budget, operations, Information Technology data processing and New York Stock Exchange compliance (Waterhouse's statement was awarded #1 ranking by Smart Money during this assignment). I have experience in IT project management and software design. Experience includes: Implementation of paperless technology in Waterhouse Security National Investor Clearing Corporation clearing operation 2000; managing launch of an eServices web site providing on-line secure access of brokerage statements to 2.5million Waterhouse clients (2001); designing Microsoft.NET and SQL Server based software systems for Mathematica Policy Research 2003-2006; directing design testing and launch of cloud based Microsoft Customer Relationship Management (CRM) applications for Southern New Hampshire University 2012-2013. As an Adjunct Instructor I have taught courses in Corporate Finance, Microsoft applications and the .NET C# programming language.

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 11-250-1 Printed: September 12, 2014

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**
- DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**