

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

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Annual Reconciliation of Energy Service and Stranded Costs for 2012
Docket No. DE 13-108

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

NOW COMES Public Service Company of New Hampshire ("PSNH" or the "Company") and, pursuant to Puc 203.07(e) and 203.09, hereby objects to the Motion to Compel PSNH to respond to the data request of Conservation Law Foundation ("CLF"). In support hereof, PSNH says the following:

1. As noted in CLF's Motion, on August 26, 2013, CLF submitted the following data request to PSNH in the instant docket:

CLF – 1 For each day during the calendar year 2012, please provide the dispatch / operating instructions, including without limitation: a) market offers, b) declaration of schedule and if applicable, the dispatchable range provided with any such instructions, provided by PSNH to ISO-NE for each unit at Merrimack and Schiller Stations. Please provide copies of PSNH's log and/or records for each submitted dispatch / operating instruction.

PSNH objected to the request by stating:

PSNH objects to the question on the basis that it is unduly burdensome because it would require the collection and compilation of voluminous detailed data. Moreover, the question is not relevant to the proceeding nor is it calculated to lead to the discovery of evidence admissible in the proceeding. Further, the requested information is confidential and proprietary, and disclosing the information could adversely affect PSNH's future ability to effectively participate in the marketplace.

Following communications with CLF regarding this objection, PSNH determined that it would maintain the objection and declined to respond to the request.

2. “In a discovery dispute, the Commission applies by analogy the standard applicable to litigation in Superior Court, which requires a party seeking to compel discovery to show that the information being sought is relevant to the proceeding or is reasonably calculated to lead to the discovery of admissible evidence.” *Public Service Company of New Hampshire*, Order No. 25,334 (March 12, 2012) at 9. Further, “when considering motions to compel discovery, the commission balances such factors as the relevancy of the requested information, the effort needed to gather it, the availability of the information from other sources, and any other relevant criteria.” *Public Service Company of New Hampshire*, Order No. 20,216, 76 N.H. P.U.C. 559, 561 (August 20, 1991).

3. PSNH discusses first that which CLF addresses only briefly in its motion, specifically, the burdensome nature of the request. CLF contends, in summary fashion at paragraph 7, that providing the response would not be unduly burdensome because PSNH had agreed to provide similar information in an unrelated docket 3 years prior, subject to the execution of a confidentiality agreement. That question and response have no bearing on any decision the Commission must make here. In the docket referenced by CLF, CLF did not execute a confidentiality agreement. Accordingly, no information was ever compiled and the scope of work required to compile it was never defined. Therefore, regardless of what decision might have been rendered in that case, it provides no information that is useful in deciding this issue.

4. In reviewing the matter in the present docket, the request is unduly burdensome to PSNH. In its question, CLF states that it is seeking the “dispatch/operating instructions, including without limitation” various other pieces of information provided to ISO-NE, as well as any logs or records PSNH may have that are associated with that information. Initially, PSNH notes that it is not clear what is meant by the phrase “without limitation”, but it appears to

indicate that the request is for a broad sweep of information that may or may not be available to PSNH. Even putting reasonable bounds around the request, it is seeking, at a minimum, 8760 hours of “dispatch/operating instructions”, “market offers”, “declaration[s] of schedule[s]”, “dispatchable range” and “logs and/or records for each submitted dispatch/operating instruction” on at least 5 separate units. This is a substantial amount of data that would require significant time to compile because PSNH does not keep any such data in a specific file or set of files. PSNH would be required to manually collect and compile the information and enter it into some format for provision to others. Moreover, PSNH notes that since the request is expressly stated as being “without limitation” it could be that even if that information is compiled, CLF may contend that any response is not sufficient because CLF believes other data may be available. PSNH should not be required to undertake such an effort to produce information on the basis of CLF’s belief that there may be some useful information to be obtained.

4. In an attempt to define the scope of its request, CLF contends, at paragraph 4 of its motion, that it is seeking information regarding the extent to which PSNH self-scheduled its units and operated them irrespective of whether the price it collected covered its costs. If that were truly CLF’s concern, the question could have asked for that information, but it did not. CLF is seeking far more than the information it now contends it wishes to obtain. Further, other parties in this docket, and in similar prior dockets, have asked for similar information, albeit much more constrained, and PSNH has provided it. CLF now seeks a far wider swath of information that may or may not be relevant or useful in answering the question CLF now claims it is intending to explore. CLF has presented PSNH with an unduly burdensome request to which PSNH should not be required to respond.

5. As to the issue to which CLF devotes the majority of its motion, the relevance of the information, PSNH also disputes the relevance of the broad information sought by this question. As noted above, more targeted and meaningful information has already been provided. As such, it is not clear that the substantial amount of information requested would provide any information that is relevant to reviewing PSNH's actions.

6. Moreover, CLF rests its contention on questionable claims of relevance. In paragraph 5 of its motion, CLF contends that PSNH has acknowledged in a data response in a different docket more than 2 years ago that it "frequently" operates its units "at a loss" and that somehow that response makes the instant request relevant. PSNH notes first that the response referenced in CLF's motion describes the operation of PSNH's units in 2010. In that this is a review of PSNH's activities in 2012, the underlying response provides no insights to any issue in this docket. Also, CLF ignores the context of the prior request in an attempt to claim that it provides a frame of reference for the present request. The prior question related to "any" of PSNH's units, not necessarily the ones cited in its current request, and the response noted that in 2010 there were approximately 1,766 hours where "any" of PSNH's units operated when the clearing price was below PSNH's marginal price. CLF disregards the portion of the response noting that those hours amounted to approximately 3.4 percent of "total resource generation" – hardly the "frequent" operation claimed by CLF. Further, this minimal percentage covered "the spot market for the subject time period under the stated conditions". Thus, the number cited by CLF as making its current request relevant related to only 3.4 percent of generation, including generation not included in the current request, in a different time period and under the prevailing conditions at that time. There is simply no basis to conclude that the information cited by CLF makes the question under review relevant.

6. CLF also contends that the relative costs of PSNH's units compared to other generating stations identified in Staff's report in an unrelated docket, as well as information it states that it has compiled from readily available public sources, make the requested information relevant. PSNH notes first that, even assuming CLF's data compilation as presented in its paragraph 6 is accurate, such a compilation proves that much of the information CLF seeks is already publicly available. More importantly, the information presented does not provide any insights into the operational characteristics of any of the plants, other than their fuel source. Without information about each of the plants referenced by CLF, including their fixed and variable costs, operating parameters and other information, information about PSNH's plants would be essentially meaningless. Whether the capacity factors of PSNH's plants would have, or should have, been different as compared to those plants, without information about those plants will not "inform the reasons for and costs to ratepayers of Merrimack's operations in 2012" as claimed by CLF. CLF Motion at Paragraph 6. As such, CLF makes no case for the information it now requests as being relevant to this docket.

WHEREFORE, PSNH respectfully requests that the Commission deny CLF's Motion to Compel as being unduly burdensome and irrelevant to the instant docket, and order such further relief as may be just and equitable.

Respectfully submitted,

Public Service Company of New Hampshire

October 7, 2013

Date

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached Objection to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

October 7, 2013

Date



Matthew J. Fossum