

THE STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DE 14-238

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE DETERMINATION
REGARDING PSNH'S GENERATION ASSETS**

**OFFICE OF ENERGY AND PLANNING'S OBJECTION TO NON-ADVOCATE
STAFF'S ALTERNATIVE RELIEF IN RELATION TO LA CAPRA**

NOW COMES the New Hampshire Office of Energy and Planning ("OEP"), through counsel, the Office of the Attorney General, and pursuant to N.H. Admin. Rules Puc 203.07(e) submits this objection to the alternative relief requested in Non-Advocate Staff's Objection to Advocate Staff's Motion for Leave to Contract with La Capra Associates, Inc. to Provide Rebuttal Testimony. In support of this objection, OEP states as follows:

1. On October 1, 2015, designated Advocate Staff (General Counsel F. Anne Ross and Electric Division Director Thomas C. Frantz) filed a motion requesting leave to contract with La Capra Associates, Inc. ("La Capra") to provide rebuttal testimony in the above referenced docket.

2. On October 2, 2015, Non-Advocate Staff in this docket filed an Objection opposing Advocate Staff's request to contract with La Capra for rebuttal testimony, and proposing "an alternative to the Advocate Staff prayer for relief." Non-Advocate Staff Objection (hereafter "Objection") at 5.

3. OEP submits this objection to the "alternative relief" requested by Non-Advocate Staff. As set forth below, OEP has strong concerns with both the unusual procedure proposed by

Non-Advocate and with Non-Advocate Staff's apparent effort to restrict the introduction of relevant information into the record that would assist the Commission in adjudicating this docket.

4. As stated in Advocate Staff's motion, the basis for the request for leave to contract with La Capra was a need to rebut challenges by Non-Advocate Staff witness Michael D. Cannata, Jr., P.E. to the methodology and timeliness of La Capra's previous analysis that informed the April 1, 2014 Staff report filed in Docket IR 13-020 (the "Staff/La Capra report").¹ As acknowledged by Non-Advocate Staff, La Capra's projections of future PSNH ES rates and competitive market rates, as summarized in the Staff/La Capra report, formed the foundation for much of the Settling Parties' analysis of the impact of divestiture on PSNH customers.

5. From the outset of this docket, the importance of the Staff/La Capra report, as well as the need to update the analysis to capture recent developments in energy markets, was understood by all parties. Indeed, at the October 2, 2014 Prehearing Conference, Non-Advocate Staff Attorney Alexander Speidel indicated the need for a "fresh look" at the La Capra analysis:

And, it is our expectation that Staff will retain La Capra Consulting for a fresh report. And, moreover, I have a number of ideas regarding the facilitation of access to La Capra's methodologies. They have to be worked out in detail for the Company, for other parties, so that we'll have a proceeding where the La Capra report will be as open source as possible, and will have up-to-date data used, including data from the most recent couple of years, instead of having to rely on a report that, in this world, everything is dated the minute it comes out. But, certainly, we do not want to rely on old reports as part of this proceeding in any way. And, Staff would agree, and actually prefer to have a stipulation to the effect that we will not have these old reports relied upon as dispositive evidence in this proceeding.

Transcript of Prehearing Conference, October 2, 2014, page 42 line 15 – page 43 line 17.

¹ OEP notes that Mr. Frantz was the lead staff person who oversaw the preparation of the 2014 Staff/La Capra report in Docket IR 13-020.

6. Based on this, and other statements, OEP and the Settling Parties expected that Non-Advocate Staff would retain La Capra to perform an updated analysis that would appear in Non-Advocate Staff's responsive testimony. However, when Non-Advocate Staff filed its testimony on September 18, 2015, not only was there no testimony from La Capra, but Mr. Cannata's testimony specifically criticized the Settling Parties' reliance on La Capra's "outdated" analysis. Testimony of Michael D. Cannata, Jr., P.E. at page 9, lines 14-17 & page 10, Table 1.

7. In light of Mr. Cannata's criticisms of the Settling Parties' use of the 2014 Staff/La Capra report and the underlying La Capra analysis, and the fact that Non-Advocate Staff had not filed testimony from La Capra addressing these issues, Advocate Staff moved for permission to contract with La Capra to develop rebuttal testimony that would respond to Mr. Cannata's criticisms, and provide important information to assist the Commission's review of the proposed Settlement Agreement in this docket.

8. Rather than allow Advocate Staff to respond to Mr. Cannata's testimony with rebuttal testimony from La Capra, Non-Advocate Staff objected to Advocate Staff's motion and proposed a complex and unusual procedure whereby La Capra would become a de facto, non-sponsored witness at the hearing in this proceeding, without pre-filed testimony. Specifically, Non-Advocate Staff proposes that La Capra appear at a specially scheduled technical session to provide responses under oath and before a court reporter, to questions posed by Non-Advocate Staff, Advocate Staff, PSNH, and "other interested parties (time permitting)." Objection at 5. Staff then proposes that La Capra appear as an independent witness not sponsored by any party and be available for cross-examination on La Capra's sworn responses from the special technical session.

9. OEP is unaware of any precedent for such an unusual and unnecessarily complex procedure. As proposed, La Capra would file no testimony, would not be subject to data requests, and would not be sponsored by any party. Neither the Commission's rules nor Commission practice allow for a non-sponsored witness to appear at an adjudicatory hearing without pre-filed testimony.

10. Moreover, OEP has substantial concerns with the potential prejudice to OEP and the other parties in this proceeding inherent in Non-Advocate Staff's unorthodox proposal.

11. As a starting point, the proposed timeframe is unworkable. Non-Advocate Staff proposes to hold the special technical session on October 13, 2015, just 6 business days after Non-Advocate Staff's October 2, 2015 objection. To impose an unprecedented and convoluted procedure on the parties on such a short timeframe would leave little time for the parties to prepare to question La Capra.

12. Moreover, Non-Advocate Staff disclosed in its Objection that they are in possession of a "draft" update of La Capra's estimates of the market value of PSNH's generation assets, but that Non-Advocate Staff would only provide this update to the parties "under objection" and "during the upcoming round of discovery." Objection at 4-5. The proposed special technical session on October 13 would occur 3 days before Non-Advocate Staff's responses to data requests and disclosure of the draft La Capra update on asset valuations. Non-Advocate Staff's proposed schedule would leave the other parties questioning La Capra witnesses without important information about what additional analysis had been performed for Non-Advocate Staff.

13. Indeed, Non-Advocate Staff, but not the other parties, have both access to La Capra and knowledge of what work La Capra has performed since the 2014 Staff/La Capra

report. This access and knowledge provide a significant potential unfair advantage for Non-Advocate Staff in preparing to question La Capra at a special technical session.

14. In addition to timing concerns, Non-Advocate Staff's proposed procedure creates significant substantive concerns as well. Because no party would be sponsoring La Capra as a witness and providing pre-filed testimony, there is a substantial risk that La Capra will not have sufficient information at the proposed special technical session to answer relevant questions posed by the parties. For example, if a party were to ask La Capra for an update of its analysis to account for higher capacity prices revealed in FCA-8 and FCA-9—one of Mr. Cannata's criticisms of the previous La Capra analysis—it is likely La Capra would be unable to answer, having apparently not been retained by any party to perform such an update.

15. This highlights a further concern that Non-Advocate Staff's proposed procedure appears to be designed to restrict the type of information that La Capra could bring to inform the Commission's analysis and rebut Mr. Cannata's criticisms of the proposed Settlement Agreement. Using a special technical session to, in essence, create testimony that will later be subject to cross-examination effectively restricts La Capra's "testimony" to information and analysis that has already been conducted by La Capra while retained by Non-Advocate Staff. As the previous example demonstrates, this effectively prohibits La Capra from responding to the very criticisms raised by Mr. Cannata and defeats the purpose of Advocate Staff's request for leave to contract with La Capra for rebuttal testimony.

16. Further, OEP does not understand Non-Advocate Staff's statement that "La Capra's status as a Staff consultant will continue through the pendency of this proceeding," Objection at 6, given Non-Advocate Staff's decision not to file testimony by La Capra as part of

its case in this docket. It is unclear what role La Capra is to play for Non-Advocate Staff in the proposed procedure where La Capra will not appear as Non-Advocate Staff's witness.

17. OEP is very troubled by Non-Advocate Staff's attempt to prevent Advocate Staff from contracting with La Capra for rebuttal testimony despite having decided not to submit testimony from La Capra or to disclose an apparent "update" to at least a portion of La Capra's 2014 analysis at this time. Non-Advocate Staff's positions with respect to La Capra create the appearance that Non-Advocate Staff is advocating a particular position rather than fairly and neutrally advising the Commission, and working to present all available, relevant information to create a strong record for the Commission's adjudication of this docket.²

18. Consequently, OEP respectfully objects to the unusual and potentially prejudicial procedure proposed by Non-Advocate Staff. OEP believes that the Commission would benefit from La Capra's participation as a witness at the hearing in this docket, and supports Advocate Staff's proposal to sponsor La Capra as a witness to provide rebuttal testimony, even though OEP does not know at this time whether an update to La Capra's analysis will support the Settling Parties' position.

WHEREFORE, the New Hampshire Office of Energy and Planning respectfully requests that the Commission:

- A. Grant Advocate Staff's Motion for leave to contract with La Capra Associates, Inc. to provide rebuttal testimony;
- B. Deny Non-Advocate Staff's request for an alternative procedure as set forth in Non-Advocate Staff's objection to Advocate Staff's motion; and
- C. Grant such other relief the Commission finds fair and just.

² OEP notes that RSA 363:32, I requires that "the commission shall designate one or more members of its staff as a staff advocate . . . upon its own initiative, when the commission determines that such members of its staff may not be able to fairly and neutrally advise the commission on all positions advanced in the proceeding."

Respectfully submitted,

New Hampshire Office of Energy and Planning

By its attorneys,

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Dated: October 6, 2015


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Certificate of Service

I hereby certify that a copy of this objection has been served electronically on the persons on the Commission's service list in this docket in accordance with Puc 203.11 this 6th day of October, 2015.


Christopher G. Aslin, Esq.