

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 11-250**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**Investigation of Scrubber Costs and Cost Recovery**

**Order on the Office of Consumer Advocate's Motions to Strike Rebuttal Testimony**

**ORDER NO. 25,714**

**September 8, 2014**

In this order we grant in part and deny in part the OCA's motion to strike portions of Mr. Smagula's, Mr. Reed's, and Dr. Shapiro's rebuttal testimony. We deny the OCA's motions to strike testimony of other rebuttal witnesses. We do not strike rebuttal testimony that contains legal analysis or legislative history, but we remind the parties that we will "rely upon the parties' briefs and our own analysis to reach the proper legal conclusions."

**I. PROCEDURAL HISTORY**

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 generation plant known as Merrimack Station.

The Office of Consumer Advocate (OCA) filed five motions to strike portions of PSNH's rebuttal testimony, four of which asked the Commission to exclude parts of a witness's testimony. Those four motions were directed at the testimony of William H. Smagula (the Smagula Motion), John J. Reed (the Reed Motion), David Harrison, Jr., and Noah Kaufman (the Harrison/Kaufman Motion), and Terrance J. Large and James J. Vancho (the Large/Vancho Motion). The OCA's fifth motion was to strike all of Lisa K. Shapiro's testimony (the Shapiro Motion).

## II. POSITIONS OF THE PARTIES

### A. The OCA

Mr. Smagula's testimony covered "the legislative, economic, and public interest aspects" of the Scrubber project, discussed "how well the scrubber has run since being put in service," and responded to specific statements in the intervenors' testimony. Smagula Testimony at 2.<sup>1</sup> The OCA asked the Commission to strike three categories of Mr. Smagula's testimony as outside the scope of this docket. The first category was testimony describing the Scrubber's current operations and events that occurred prior to passage of RSA 125-O:11 through :18 (the Scrubber law) in June 2006. The OCA argued this evidence was outside the time period relevant to this case. Smagula Motion at 2. The second category was testimony on the public interest standard, which the OCA argued is not part of this docket. *Id.* The third category was testimony on legislative history and statutory interpretation. The OCA argued that legal questions are for counsel to brief and are not facts to be presented through witness testimony. *Id.* at 3-4. The Smagula Motion also moved the Commission to strike a number of attachments to Mr. Smagula's testimony for one of the reasons stated above or for being irrelevant. *Id.* at 4-7.

Drs. Harrison and Kaufman performed economic analyses of the Scrubber project based on data available in 2008 and 2009, and they critiqued the economic testimony of the intervenors' witnesses. The OCA moved to strike testimony of their "after-the-fact studies of selected data from 2008 and 2009 materials." Harrison/Kaufman Motion at 1. The OCA argued that PSNH necessarily did not rely on those studies in making decisions relevant to this docket,

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<sup>1</sup> PSNH filed all its rebuttal testimony and attachments in a single 709 page document that appears at Tab 200 in the docket. The Commission divided that document in Docketbook by witnesses' testimony and their respective attachments. <http://www.puc.nh.gov/Regulatory/Docketbk/2011/11-250.html>. References in this order will be by witness name and page number within that 709 page document. For example, page 4 of Mr. Reed's testimony will be cited as "Reed Testimony at 222," and Attachment 2 to Mr. Smagula's testimony will be cited as "Smagula Testimony at 72."

that the witnesses went beyond the proper bounds of rebuttal testimony, and that they improperly added complex material to the record at a very late stage. *Id.* at 1-3.

The joint testimony of Messrs. Large and Vancho presented the economic analysis that PSNH performed during the course of the Scrubber project. The OCA asked the Commission to strike the portions of their testimony that commented on legislative history for the reasons described above. The OCA also moved to strike a reference to the testimony of Drs. Harrison and Kaufman, relying on the arguments made in the Harrison/Kaufman Motion. Large/Vancho Motion at 2-3.

Mr. Reed described the prudence standard, testified that PSNH met that standard, and described why possible alternatives to building the Scrubber were not feasible. The OCA moved to strike Mr. Reed's references to legislative history and his legal analysis for the reasons stated above. Reed Motion at 2-3. The OCA also moved to strike a 2013 letter between the Commission and a legislative committee as outside the relevant time period. *Id.*

Finally, Dr. Shapiro's testimony summarized and attached her 2009 study, which concluded that the Scrubber project would create hundreds of jobs and related economic benefits. The OCA moved to strike all of Dr. Shapiro's testimony, arguing that it was improper testimony on legislative history, that it addressed the public interest standard that is not part of this docket, and that it covered topics not raised in any prior testimony and thus was not proper rebuttal testimony. Shapiro Motion at 2.

## **B. PSNH**

In its objection to all five motions, PSNH began with the argument that the Commission must first define the scope of the upcoming hearing before it can address the OCA's motions to strike. If the hearing were to be as narrowly focused as PSNH proposed -- a dollars-and-cents

review of PSNH's construction of the Scrubber -- then PSNH would agree that much of the challenged rebuttal testimony would be irrelevant. PSNH Objection at 2. Arguing in the alternative, in the event that the scope of this case is determined to be broader, PSNH raised the following objections to the OCA's motions to strike.

PSNH noted that each of the OCA's motions asked to strike testimony regarding SB 152, HB 496, and the reasons those bills were not enacted in 2009. PSNH argued such testimony is relevant because the substance and fate of those bills were facts known to, and relied on by, PSNH when it made decisions at issue in this docket. PSNH Objection at 7-8. According to PSNH, those facts are "a necessary and proper part of assessing what a reasonable person would understand the Scrubber Law to mean." *Id.* at 9.

In response to the Harrison/Kaufman Motion, PSNH disputed the OCA's characterization of their testimony as improper "hindsight" testimony. PSNH argued their analysis relied only on information available in 2008 and 2009 and their testimony is similar to some of the intervenors' testimony. PSNH Objection at 10-11. PSNH also objected to the OCA's complaint that the Harrison/Kaufman testimony contains "'new studies, never before seen by the parties and which played no role in the PSNH decision making process.'" PSNH Objection at 11 (*quoting* Harrison/Kaufman Motion at 2). PSNH argued that Drs. Harrison and Kaufman presented typical rebuttal testimony. PSNH Objection at 11-12.

In response to the Large/Vancho Motion, PSNH incorporated the legislative objection described above. PSNH also objected to the OCA's request to strike a reference to the studies of Drs. Harrison and Kaufman, incorporating its argument in opposition to the Harrison/Kaufman Motion. PSNH Objection at 12-13.

PSNH characterized the testimony of Mr. Reed as “relating to the prudence of PSNH regarding the Scrubber Project,” responding to the intervenors’ testimony “suggesting that PSNH had viable alternatives to pursuing the Project,” and rebutting “specific claims made” by the intervenors’ witnesses. PSNH Objection at 13. PSNH repeated its argument related to legislative testimony and argued that Mr. Reed’s legal testimony is a proper application of the law governing prudence to the facts of PSNH’s conduct. *Id.* at 14-15. PSNH argued Mr. Reed’s reference to a 2013 letter from the Commission to a legislative committee regarding the estimated duration of a proceeding before the Commission is relevant. Even though written after the time frame generally relevant to this docket, PSNH argued the letter simply documents the predicted length of an adjudicative proceeding before the Commission. PSNH Objection at 14.

In response to the Shapiro Motion, PSNH repeated the argument regarding the 2009 legislation. PSNH also objected to the OCA’s claim that Dr. Shapiro improperly addressed the public interest benefits of the Scrubber. PSNH Objection at 16. PSNH argued the Scrubber’s public interest benefits are relevant because they were important to passage of the Scrubber law and to defeat of the 2009 bills. PSNH Objection at 16-17.

### **C. Other Parties**

No other party took positions on the OCA’s motions except for the Shapiro Motion, which the Conservation Law Foundation and the Sierra Club supported. Shapiro Motion at 4.

## **III. COMMISSION ANALYSIS**

We first reject PSNH’s argument that we have not defined the scope of this proceeding. PSNH asked: “Is the scope of the proceeding limited to a review of the actions PSNH took to comply with the Scrubber law ...?” PSNH Objection at 1. We have provided a broader scope for

this proceeding since 2008. In *Investigation of PSNH's Installation of Scrubber Technology*, Order No. 24,914 at 13-14 (Nov. 12, 2008), we stated:

[The Scrubber Law] does, however, provide a basis for the commission to consider, in the context of a later prudence review, arguments as to *whether PSNH had been prudent in proceeding with installation of scrubber technology in light of increased cost estimates and additional costs from other reasonably foreseeable regulatory requirements* such as those cited by the Commercial Ratepayers, which include the Clean Air Act ... and the Clean Water Act ....

(Emphasis added.) In Order No. 24,979 at 18 (June 19, 2009), we similarly put PSNH on notice that we would carefully examine “the prudence of PSNH’s actions during the construction of the scrubber, including whether it avails itself of the variance procedure under RSA 125-O:17 in the event of escalating costs.” Although we later ruled that the variance provision of the Scrubber law may not have been a proper “off ramp” had PSNH chosen to discontinue the Scrubber and retire Merrimack Station, Order No. 25,506 at 17 (May 9, 2013), the statement quoted above repeated our intent to review PSNH’s decisions in the face of higher costs. *See also* Order No. 25,565 at 7 (Aug. 27, 2013)<sup>2</sup> (“No utility may proceed blindly with the management of its assets or act irrationally with ratepayer funds; PSNH had a duty to its ratepayers to consider the appropriate response, possibly even including a decision to no longer own and operate Merrimack Station, when facing changing circumstances.”); Order No. 25,506 at 17 (May 9, 2013) (“We do not go so far, however, as to conclude that PSNH had no management discretion in this matter. Even though it may not have been within PSNH’s management discretion to propose retirement of Merrimack Station as an alternative reduction requirement under RSA 125-O:17, PSNH, like any other utility owner, maintained the obligation to engage in good utility management at all times.”).

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<sup>2</sup> Most orders cited here are styled *Public Service Co. of N.H.* References to those orders will be to the order number and date only.

We address the OCA's motions to strike by first resolving arguments that appear in more than one of the OCA's motions. We then apply those general rulings to each motion along with any issues particular to that motion.

#### **A. The 2009 Bills and Legal Analysis**

Four of the OCA's motions asked the Commission to strike testimony regarding the "legislative history" of SB 152 and HB 496, both introduced in January 2009 (the 2009 bills). HB 496 proposed a \$250 million limit to the prudent costs PSNH could recover for building the Scrubber. SB 192 would have required the Commission to investigate whether the Scrubber was in the public interest of PSNH's retail customers. Both bills were deemed "inexpedient to legislate" in the spring of 2009.<sup>3</sup> The OCA argued this testimony is irrelevant and moved to strike any mention of the 2009 bills and of what happened to them. The OCA also moved to strike the witnesses' testimony of the reasons for the Legislature's actions on the 2009 bills and testimony regarding the effect those legislative events had on PSNH's decisions regarding the Scrubber. PSNH disagreed, arguing it was aware of and considered those legislative events when it made decisions related to the Scrubber project that are at issue in this docket.

This is not the first time we have addressed the 2009 bills. In an order discussing the scope of this docket, we noted that the 2009 bills are irrelevant to our interpretation of the Scrubber law and RSA 369-B:3-a because those statutes predated the 2009 bills. Order No. 25,565 at 11. In orders related to the deposition of PSNH's former president, we stated that, although "we [saw] no relevance to PSNH's ... alleged attempts to block the Legislature or this

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<sup>3</sup>For the text of the 2009 bills and their procedural history at the Legislature, *see* [http://www.gencourt.state.nh.us/bill\\_Status/bill\\_status.aspx?lstr=395&sy=2009&sortoption=&txtsessionyear=2009&txtbillnumber=sb152](http://www.gencourt.state.nh.us/bill_Status/bill_status.aspx?lstr=395&sy=2009&sortoption=&txtsessionyear=2009&txtbillnumber=sb152), and [http://www.gencourt.state.nh.us/bill\\_Status/bill\\_status.aspx?lstr=596&sy=2009&sortoption=&txtsessionyear=2009&txtbillnumber=hb496](http://www.gencourt.state.nh.us/bill_Status/bill_status.aspx?lstr=596&sy=2009&sortoption=&txtsessionyear=2009&txtbillnumber=hb496).

Commission from looking further into whether PSNH should have proceeded with the Scrubber project,” Order No. 25,566 at 5 (Aug. 27, 2013), we recognized that “information presented by PSNH and others before the legislature may be relevant,” Order No. 25,592 at 6. We applied those orders to resolve motions to compel, generally requiring the production of information given to lawmakers. Order No. 25,646 at 5-6 (Apr. 8, 2014).

The OCA’s motions present a slightly different issue. The question is not the relevance of the 2009 bills to our statutory analysis of the Scrubber law, but their possible relevance to PSNH’s conduct. We find that the basic facts about the 2009 bills are relevant to PSNH’s decisions, and we find testimony about the effect that their legislative failure had on PSNH decision making is also relevant.

The content of the 2009 bills and the fact that both bills were deemed inexpedient to legislate are matters of public record and are not in dispute, aside from arguments of relevance that we resolve here. We may take official notice of “any fact which could be judicially noticed in the courts of New Hampshire.” RSA 541-A:33, V; N.H. Code Admin. Rules Puc 203.27. We have the authority to take official notice of the language of the 2009 bills and of the fact that both bills were deemed inexpedient to legislate in 2009. *See Broughton v. Proulx*, 152 N.H. 549, 553 (2005) (“courts are authorized to take judicial notice of municipal ordinances”); *see also Motions for Access of Garlock Sealing Technologies, LLC*, 488 B.R. 281, 301 (Bankr. D. Del. 2013) (judicial notice taken of pending legislation). To eliminate the need for testimony as to the basic facts regarding SB 152 and HB 496, we hereby take administrative notice of the two bills and of the fact that they were deemed inexpedient to legislate.<sup>4</sup>

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<sup>4</sup> RSA 541-A:33, VI and Puc 203 both require an “opportunity to contest the material so noticed.” Any objection to the commission taking administrative notice as described above shall be filed promptly.



We find unhelpful, however, testimony that gives the witness's opinion of the reasons for the Legislature's decisions to pass the Scrubber law and not to pass the 2009 bills. As a general matter, witnesses are not permitted to testify about what is in the minds of others because such testimony is speculative. *See* Rule 602, N.H. Rules of Evidence ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."). Testimony that attempts to explain why the Legislature did or did not pass legislation is speculative. Legislative intent is a legal question that turns on the language of the statutes or bills and the traditional sources of legislative history. *See State v. Dansereau*, 157 N.H. 596, 599-601 (2008) (prior versions of the law, proposed bills, and testimony at legislative hearings); *Appeal of Malouin*, 155 N.H. 545, 550-51 (2007) (documents of subcommittee work sessions); *Petition of the State of New Hampshire*, 152 N.H. 185, 189 (2005) (legislative committee report). Those sources do not include after-the-fact witness testimony.

A second, and related, argument that appears in several of the OCA's motions is that the challenged testimony is legal analysis and argument, rather than statements of fact. In this docket, we have said,

Although we recognize that non-lawyer witnesses occasionally give their understanding of legal concepts to provide context for their opinions, such testimony is generally outside their areas of expertise. We review all testimony, *but we rely upon the parties' briefs and our own analysis to reach the proper legal conclusions*. Therefore, we will generally not compel lay witnesses to respond to discovery questions that seek legal interpretations.

Order No. 25,646 at 4 (emphasis added). Order No. 25,646, which addressed motions to compel, applies equally to the OCA's motions to strike testimony that is legal analysis and legislative history. None of PSNH's rebuttal witnesses is a lawyer. Some of the legal testimony and description of legislative actions to which the OCA objects may be characterized as putting

factual testimony in context. Other challenged testimony is legal analysis and the witnesses' view of legislative intent that we have already stated are not proper for witness testimony.

We will not review the testimony line-by-line and strike language that is improper legislative history or legal analysis because the witnesses' statements are not assertions of fact that must be stricken. Instead, we will follow the reasoning of Order No. 25,646 and "rely upon the parties' briefs and our own analysis to reach the proper legal conclusions." *Id.* We again caution the parties to refrain from offering such testimony beyond that necessary to place their witnesses' factual or expert testimony in context.

### **B. The Relevant Time Period for Testimony**

The OCA moved to strike testimony of several witnesses describing events that occurred before the Scrubber law passed in 2006 or after the Scrubber went into service in late 2011. In a prior order that discussed the scope of this docket we stated that we will,

not address current market or regulatory conditions but rather those conditions in place at the time of the decision-making under review; specifically the period of time after the Legislature's [June 2006] decision to require the Scrubber up to the point of the Scrubber's 'substantial completion' in September 2011.

Order No. 25,546 at 9 (July 15, 2013). This time frame follows from the prudence standard that governs this case. We are to judge what a reasonable utility manager would do under circumstances existing at the time of the challenged decisions. Order No. 23,549 (Sept. 8, 2000) at 37-38, 40; *see Appeal of Conservation Law Foundation*, 127 N.H. 606, 638 (1986) ("prudence judges an investment or expenditure in the light of what due care required at the time an investment or expenditure was planned and made"). We will address OCA's arguments regarding time frame when considering specific testimony in Section D herein.

### **C. Public Interest Testimony**

The OCA moved to strike the testimony of two witnesses that discussed the public interest benefits of the Scrubber, Mr. Smagula and Dr. Shapiro. The OCA claimed such public interest testimony “is outside the scope of this prudency investigation.” Smagula Motion at 2; *see* Shapiro Motion at 2-3. We find that limited testimony regarding the public benefits to flow from the Scrubber project may bear on the reasonableness of PSNH’s conduct. PSNH’s knowledge of the Scrubber law’s predicted public interest benefits may have played a role in the decisions relevant to this docket. We limit testimony of public interest benefits to those benefits predicted before, or contemporaneous with, the decisions at issue in this docket. We will not allow hindsight testimony as to whether those benefits were realized because such testimony is not relevant to PSNH’s decision making at the time the expenditures were planned and made.

### **D. The OCA’s Motions to Strike**

#### **1. The Smagula Motion**

The OCA moved to strike pages 3 through 28 of Mr. Smagula’s testimony. Smagula Motion at 2-3. Except for a very few statements of fact, we find pages 3 through 21 to be legal analysis and improper statements regarding legislative history. As stated above, we will not strike this testimony, but we will rely upon our own legal analysis and review of legislative history. From page 22 through page 28, line 7, Mr. Smagula described the current operation of the Scrubber and other events that occurred after the Scrubber became operational in September 2011. This testimony is not relevant to PSNH’s decisions concerning whether and how to build the scrubber and, therefore, we order it stricken.

The OCA moved to strike a number of excerpts from Mr. Smagula’s testimony between pages 29 and 43. Smagula Motion at 3. The first group of excerpts describes the scientific tests

that predated the Scrubber law. The choice of technology is not a decision we review in this docket. We thus strike the following excerpts as irrelevant: page 29, lines 14-22, and page 30, line 1, through page 31, line 2. We also strike page 31, line 8, through page 32, line 22, a critique of Dr. Sahu's testimony based upon facts that arose after 2011. We deny the request to strike the statement at page 35, line 14 ("Despite his significant reliance on the actions of Entergy Louisiana in the Little Gypsy Project to support his testimony ..."), as it is merely a characterization of Mr. Kahal's testimony. At pages 35 through page 40, line 11, Mr. Smagula listed a number of data requests regarding a project of Entergy Louisiana to which the OCA objected and did not answer. Mr. Smagula then provided his own answers. The OCA's witness, Mr. Kahal, used the Entergy project as an example of appropriate utility behavior.

December 23, 2013, Direct Testimony of Matthew I. Kahal, at 38-48. We find Mr. Smagula's testimony at pages 35 through 40 to be appropriate rebuttal. Last, Mr. Smagula's list of quotes from Commission orders relating to the prudence standard, page 42, line 3, through page 43, line 14, is legal analysis. We will not strike the testimony, but we will conduct our own analysis.

The OCA moved to strike Attachment 1 (a list of quotes from statutes, orders, and other legal sources) and the three appendices attached to Mr. Smagula's testimony titled "Supplemental Testimony Concerning the 'Statutory Mandate,'" "Potential Enforcement Penalties Facing PSNH for Failure to Comply with the Scrubber Law," and "Supplemental Testimony Regarding the Commission's Review of the Scrubber Cost Estimate." Smagula Motion at ¶ 9 and ¶ 21; *see* Smagula Testimony at 47, 61, 63, and 66. Although all four of those documents fall into the categories of legal analysis and improper legislative history, we will not strike this testimony, but will rely upon our own legal analysis and the parties' briefs on these issues.

The OCA also moved to strike 14 other attachments to Mr. Smagula's testimony. Smagula Motion at ¶¶ 10-20. Attachment 2 is a brief filed in the *Appeal of Stonyfield Farm* case, which is legal argument that we will not strike. Smagula Testimony at 72. Attachment 3 (a data response relating to recent operations), Attachment 4 (ISO New England's "2013 Regional Electricity Outlook"), and Attachment 5 (2014 "Final Report" of Merrimack Station stack testing), contain information not relevant to the decisions at issue in this docket and are hereby stricken. Smagula Testimony at 100, 101, and 108. We will not strike Attachment 12 (the majority report of the House Science Technology and Energy Committee on HB 496) or Attachment 17 (a record of an April 2006 senate hearing on the Scrubber law). Smagula Testimony at 156 and 168. Those documents are appropriate evidence of legislative history.

Attachments 18 through 24 consist of orders from the Department of Environmental Services and webpages and letters from the Sierra Club and the CLF that refer to the mandatory nature of the Scrubber law. Smagula Testimony at 174 -204. We deny the OCA's motion to strike these attachments because they are marginally relevant to the extent they may have affected PSNH's decisions at issue in this docket. Finally, Attachment 25 is a Sierra Club data response that attached a report the Sierra Club and others provided to the legislature prior to passage of the Scrubber law. Smagula Testimony at 206. This document is part of the legislative history of which we have taken administrative notice. We deny the request to strike Attachment 25.

## **2. The Harrison/Kaufman Motion**

The OCA moved to strike pages 289 through 309 and a number of attachments from the testimony of Drs. Harrison and Kaufman. Harrison/Kaufman Motion at 4. We consider this testimony and related attachments to be proper rebuttal. The testimony is based on the facts

purportedly available to PSNH in the relevant time of 2008 and 2009 and opines that PSNH acted prudently. The challenged testimony is similar in structure to that of the intervenors' witnesses. The testimony's complexity is a function of this docket and is not a basis to strike. Although some of the testimony veers into legal analysis, as discussed above, we will not strike the testimony, but will make our own legal analysis. The OCA's motion to strike portions of the Harrison/Kaufman testimony is denied.

### **3. The Large/Vancho Motion**

The OCA moved to strike sections of the Large/Vancho testimony regarding legislative history and a reference to the Harrison/Kaufman reports. Large/Vancho Motion at 2-3. We deny the motion. We will limit the testimony regarding the witnesses' view of legislative history as discussed above. Large/Vancho Testimony at 412. The reference to the Harrison/Kaufman reports is relevant because we find the reports themselves to be relevant, as discussed in Section 2 above. Large/Vancho Testimony at 413.

### **4. The Reed Motion**

The OCA moved to strike several sections of Mr. Reed's testimony as improper legislative history and legal analysis, and to strike a reference to a 2013 letter between the Commission and a legislative committee as outside the relevant time period. Reed Motion at ¶¶ 4, 5, and 7. We find that the following sections of Mr. Reed's testimony contain legal analysis and improper legislative history, which we will treat as discussed above: Reed testimony at pages 222 through 229; page 234, line 1 through page 235, line 6; page 241, lines 18-33; and page 251, lines 1-27.

The OCA moved to strike testimony at page 253, lines 17-23, which discusses alleged customer benefits that resulted from PSNH having delayed consideration of Merrimack Station's

future until the Scrubber was installed. The OCA moved to strike testimony at page 255, line 18, through page 256, line 7, which also relates to public interest benefits that Mr. Reed claims flowed from construction of the scrubber. For the reasons discussed above, we grant the OCA's motion to strike this public interest testimony because it relates to current benefits that are irrelevant to PSNH's prior decisions.

We deny the request to strike the 2013 letter. Although outside the time period of relevant PSNH decisions, it pertains to the length of a proceeding before the Commission which is fair rebuttal to TransCanada's testimony regarding a possible divestiture of Merrimack Station. Reed Testimony at 249-250.

### **5. The Shapiro Motion**

The OCA moved to strike all of Dr. Shapiro's testimony for three reasons. The OCA argued that Dr. Shapiro's testimony contains improper legislative history, discusses the public interest, which OCA argues is irrelevant, and does not rebut any intervenor testimony. Shapiro Motion at 2. As discussed above, Dr. Shapiro's testimony regarding legislative intent is not a proper subject for factual testimony. We will consider that testimony as discussed above. To the extent Dr. Shapiro discusses the public interest benefits flowing from the Scrubber law, we will not strike those benefits that she predicted at the time relevant to this docket, which include her 2009 report and related testimony. Shapiro Testimony at 2-3. We will strike Dr. Shapiro's testimony that those benefits actually occurred because that information was not available to PSNH when it made the contested decisions and is irrelevant. We thus strike Dr. Shapiro's testimony from page 6, line 15, through page 7, line 2. Regarding the OCA's argument that Dr. Shapiro's testimony does not rebut any testimony filed by the intervenors, we disagree. The intervenors criticized PSNH's interpretation of the Scrubber law. *See, e.g.*, December 23, 2013,

Testimony of Michael E. Hachey, at 7 (“To suggest that the law was a mandate to build the scrubber project at any cost is irresponsible, defies common sense, and flies in the face of prudent utility practice ...”). PSNH may have relied upon the public benefits that Dr. Shapiro predicted in making decisions at issue in this docket, rendering that part of Dr. Shapiro’s testimony relevant.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the motion to strike Mr. Smagula’s testimony is granted in part and denied in part as detailed above, although portions of his testimony relating to legislative history and legal analysis are subject to limitations as discussed above; and it is

**FURTHER ORDERED**, that the motion to strike the testimony of Drs. Harrison and Kaufman is denied, although portions of their testimony relating to legal analysis are subject to limitations as discussed above; and it is

**FURTHER ORDERED**, that the motion to strike the testimony of Messrs. Large and Vancho is denied, although portions of their testimony relating to legislative history are subject to limitations as discussed above; and it is


**FURTHER ORDERED**, that the motion to strike Mr. Reed’s testimony is granted in part and denied in part, although portions of his testimony relating to legislative history and legal analysis are subject to limitations as discussed above; and it is

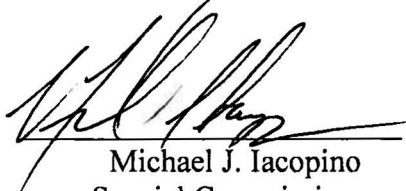
**FURTHER ORDERED**, that the motion to strike Dr. Shapiro’s testimony is granted in part and denied in part, although portions of her testimony relating to legislative history are subject to limitations as discussed above.



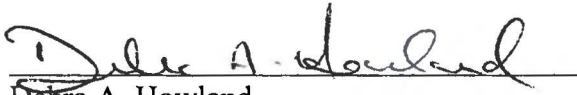
By order of the Public Utilities Commission of New Hampshire this eighth day of  
September, 2014.

  
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Amy L. Ignatius  
Chairman

  
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Martin P. Honigberg  
Commissioner

  
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Michael J. Iacopino  
Special Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director