

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Determination Regarding PSNH's Generating Assets
Docket No. DE 14-238

**MOTION TO COMPEL PRODUCTION OF LA CAPRA DOCUMENTS IN ADVANCE
OF TECH SESSION/DEPOSITION ON OCTOBER 26, 2015 AND/OR FOR
ALTERNATE RELIEF AND FOR EXPEDITED RULING**

NOW COMES the City of Berlin ("the City") and the Town of Gorham ("the Town") (collectively "the Municipalities"), by and through their attorneys, Donahue, Tucker, & Ciandella, PLLC, and hereby file this Motion requesting that the Public Utilities Commission ("PUC") compel the Non Settling Staff and/or La Capra Associates, Inc. ("La Capra") Witnesses to produce the documents requested by the Municipalities in their "Areas of Inquiry and Document Requests for La Capra Witness" that were timely filed on October 16, 2015 in advance of or at the very latest at the Tech Session/Deposition of La Capra Witnesses currently scheduled for 9 a.m. on Monday, October 26, 2015. The Municipalities request an expedited ruling on this Motion given such time constraints. In support thereof, the Municipalities state as follows:

1. The Municipalities have been granted Full Intervenor Status in this Docket.
2. In PUC Docket No. IR 13-020, La Capra authored an appraisal of the specific generation facilities owned by PSNH in the State of New Hampshire, including, Smith Station, located in the City, and Gorham Station, located in the Town (hereinafter "the Original Report").
3. The Municipalities were not parties to Docket No. IR 13-020; however, Non Settling Staff and the La Capra Witnesses have access to the Original Request and the documentation underlying that Request.

4. The Original Report appraised Smith Station at \$47 Million, Gorham Station at \$3.5 Million, and Newington Station at \$90 Million, with a total appraised value for all of PSNH's generation assets in New Hampshire of \$225 Million.

5. The Original Report that is publically available is redacted, with much of the data inputs, comparable sales information, discounted cash flows ("DCF's"), and other valuation methodologies undisclosed to the public.

6. On August 17, 2015, La Capra prepared an updated appraisal (hereinafter "the Update"), in which: (a) the appraised value of Smith Station was reduced to \$36 Million; (b) Gorham Station was reduced to \$2.5 Million; (c) Newington Station increased to \$130 Million; but (d) the total appraised value of PSNH's generation assets remained unchanged at \$225 Million.

7. On October 8, 2015, the PUC held a hearing concerning "Settling Staff" Motion for Access to La Capra Witnesses ("the Hearing"). Following the hearing, counsel for the various parties in attendance, including counsel for the Municipalities, met to discuss various scheduling issues including the date for a Tech Session/Deposition where La Capra Witnesses would be made available under oath and on the record. In that post Hearing discussion, the undersigned counsel and others expressed the need to gain access to the Original Report and related supportive documents. The parties in attendance agreed to a deadline of October 16, 2015 to tender non-exclusive "areas of interest" so that the La Capra Witnesses could be better prepared.

8. On October 14, 2015, the PUC issued a schedule with regard to the La Capra Witnesses, in which the PUC set a date of October 16, 2015 for the submission of "questions/areas of interest for the La Capra Deposition/Tech Session scheduled for October 26, 2015".

9. On October 16, 2016, the Municipalities timely submitted their "Areas of Inquiry and Document Requests for La Capra Witnesses," a true and correct copy of which is attached as Exhibit 1, wherein the Municipalities sought:

- 1) unredacted copies of the Original Report;
- 2) unredacted comparable sales data considered in the creation of the Original Report;
- 3) unredacted comparable sales data considered in the creation of the Update;
- 4) unredacted DCF's used, prepared, or considered in the Original Report;
- 5) unredacted DCF's used, prepared, or considered in the Update;
- 6) unredacted documents supporting the increase in value of the Newington Station facility; unredacted documents supporting the decrease in value of the Smith Station facility; and
- 7) unredacted documents supporting the decrease in value at the Gorham Station facility

(items 1 through 7 are collectively referred to as "the Documents"). The Municipalities requested that the Documents be provided on or before the close of business on October 21, 2015, if possible.

10. The Municipalities' attorney and consulting expert offered to sign non-disclosure agreements comparable to the non-disclosure agreements they signed with regard to the Update to allow for the production of unredacted copies of the materials associated with the Original Report.

11. On October 20, 2015, Attorney Alex Speidel, counsel for the Non-Settling Staff, informed the Municipalities via email that the Deposition/Tech Session would not be a "document-production exercise," and, therefore, there is "no obligation for La Capra to provide these documents in response to [the Municipalities'] inquiry." The undersigned counsel for the

Municipalities objected to that position and asked Attorney Speidel to reconsider his position. A true and accurate copy of the email is attached as Exhibit 2.

12. As set forth in Exhibit 2, on October 21, 2015, Attorney Speidel confirmed that the Municipalities' requests for information from the La Capra Witnesses would not be fulfilled, claiming, incorrectly, that the PUC's Scheduling Order of October 14, 2015 was only a technical session, for which only informal questioning would be permitted. In doing so, Attorney Speidel ignored the PUC's clear language that the October 26, 2015 presentation of La Capra would also be a deposition.

13. The Municipalities note that, even if the October 26, 2015 presentation of the La Capra Witnesses were "only" a tech session, common practice before the commission allows documents to be requested and produced in association with the tech session, and prior tech sessions in this docket have resulted in documents being produced by various parties, including PSNH/Eversource and GSHA.

14. On October 21, 2015, following the email exchange with counsel for the Non Settling Staff, the undersigned counsel emailed Attorney Harry Malone, counsel for the La Capra Witnesses, who had filed an Appearance and Motion on behalf of La Capra in this docket, in an effort to see if an amicable resolution could be reached without the Commission's intervention. Attorney Malone stated that he was open to a resolution but would need to confirm with his (and Non Settling Staff's) client, La Capra. Attorney Malone had not been able to respond by the time this Motion had to be finalized and filed.

15. On October 22, 2015, the undersigned counsel conferred with Attorney Speidel, during which Attorney Speidel informed the undersigned counsel that the Municipalities' requests

would have to be resolved through him, not Attorney Malone, and that the Municipalities would be allowed to ask questions at the October 26, 2015 tech session/deposition.

16. The PUC should grant the Municipalities Motion because materials sought by the Municipalities are necessary to allow the Municipalities and all other parties and intervenors the ability to adequately review the La Capra Update, a document likely to be of high importance to this docket.

17. Pursuant to PUC Rule 203.09(j), "the commission shall authorize other forms of discovery, including technical sessions, depositions, and any other discovery method permissible in civil judicial proceedings before a state court when such discovery is necessary to enable the parties to acquire evidence admissible in a proceeding."

18. It is a common and permissible practice in a civil judicial proceeding before a New Hampshire Court to allow for the production and inspection of documents in relation to a deposition. See Superior Court Rule 26(d).

19. Here, the information sought is necessary to enable the parties, not just the Municipalities, to acquire evidence admissible in this proceeding concerning the value of the various generation facilities, including those located in the Municipalities, the efficacy of the various auction procedures posed by the various parties, the supposed need for an immediate auction (or a delayed auction as proposed by Non-Settling Staff), and the potential range of stranded costs sought to be recovered by PSNH/Eversource.

20. The information sought by the Municipalities is of critical importance to this Docket because the unredacted Original Report and the supporting documentation to the Original Report and the Update are necessary to properly analyze the accuracy of the Update and the various competing estimates of values and stranded costs being considered by the Commission.

21. The Non-Settling Staff's refusal to produce the Documents reduces the transparency associated with this Docket thus clouding this Commissioner's ability to analyze the Update — a document that may be used by the PUC or the parties to measure the appropriateness of any sale of PSNH's generation assets.

22. Additionally, the deposition of the La Capra Witnesses will be materially hampered without the production of this information and will not result in the production or discovery of information necessary to properly understand and digest the Update.

23. Given the urgency of this matter, the Municipalities respectfully request that the PUC consider and grant this Motion to Compel on an expedited basis. In the alternative, the Municipalities request that the PUC rule that the deposition of the La Capra Witnesses scheduled for October 26, 201 be allowed to continue to an additional date after the Municipalities' requests for documentation have been fulfilled.

24. Alternatively, the Municipalities request that the Commission reopen the period for the submission of data requests and supplemental testimony for a sufficient period to allow additional data requests to Non Settling Staff and La Capra to obtain the Documents. See N.H. CODE OF ADMIN. R. Puc. 203.09.

WHEREFORE, the Municipalities request that the PUC:

- A. Grant the Municipalities' Motion to Compel;
- B. Compel the La Capra Witnesses to produce the Documents requested by the Municipalities on or before 9:00 a.m. on October 26, 2015;
- C. In the alternative, order that the deposition of the La Capra Witnesses will continue for an additional date after the La Capra Witnesses produce the Documents requested by the Municipalities; and

D. In the alternative, order that the period for the submission of data requests and supplemental testimony be reopened for a sufficient period to allow additional data requests to Non Settling Staff and La Capra to obtain the Documents.

Respectfully submitted,
City of Berlin and Town of Gorham

By and through their attorneys,
DONAHUE, TUCKER & CIANDELLA

Date: October 22, 2015

By:




Christopher L. Boldt, Esq.
NHBA # 15301
56 NH Route 25
Meredith, NH 03253
(603) 776-4573

CERTIFICATE OF SERVICE

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

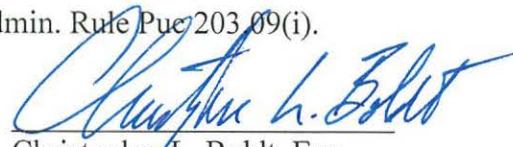
October 22, 2015
Date


Christopher L. Boldt, Esq.

CERTIFICATE OF ATTEMPT TO RESOLVE DISPUTE INFORMALLY

I hereby certify that I have made a good faith effort to resolve this dispute informally with all applicable parties pursuant to N.H. Code Admin. Rule Puc 203.09(i).

October 22, 2015
Date


Christopher L. Boldt, Esq.

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.

Executive.Director@puc.nh.gov	
alexander.speidel@puc.nh.gov	howard.moffett@leg.state.nh.us
amanda.noonan@puc.nh.gov	ifrignoca@clf.org
andrew.hamilton@mclane.com	james.brennan@oca.nh.gov
catherine.corkery@sierraclub.org	james.mccaffrey@sierraclub.org
catherine.marsellos@puc.nh.gov	jay.dudley@puc.nh.gov
cboldt@dtclawyers.com	jeb.bradley@leg.state.nh.us
cholahan@nepga.org	kate@nhsea.org
christine.vaughan@nu.com	kristi.davie@nu.com
Christopher.aslin@doj.nh.gov	leszek.stachow@puc.nh.gov
christopher.goulding@nu.com	lisa.cameron@brattle.com
dan.feltes@leg.state.nh.us	mark.berkman@brattle.com
daniel.allegretti@exeloncorp.com	matthew.foosum@eversource.com
david.shulock@puc.nh.gov	mayoac@nu.com
ddolan@nepga.org	mayor@manchesternh.gov
Dean.murphy@brattle.com	melissa.lauderdale@constellation.com
dpatch@orr-reno.com	Meredith.hatfield@nh.gov
elizabeth.nixon@puc.nh.gov	michael.sheehan@puc.nh.gov
elizabeth.tillotson@nu.com	mike@ridgesend.com
eric.chung@nu.com	nhlocal@ibew1837.org
f.anne.ross@puc.nh.gov	ocalitigation@oca.nh.gov
fedelblut@gmail.com	pcramton@gmail.com
gilfavor@comcast.net	pjaesd@comcast.net
grant.siwinski@puc.nh.gov	pradip.chattopadhyay@oca.nh.gov
harringt@metrocast.net	richard.chagnon@puc.nh.gov

Docket #: 14-238-1 Printed: October 22, 2015

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.

rick.white@nu.com
rmunnelly@davismalm.com
robert.bersak@nu.com
sgeiger@orr-reno.com
slamb@biaofnh.com
susan.chamberlin@oca.nh.gov
suzanne.amidon@puc.nh.gov
terry.cronin@tds.net
tirwin@clf.org
tom.frantz@puc.nh.gov
william.smagula@nu.com
zachary.fabish@sierraclub.org