

**THE STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
PETITION FOR INCREASE IN SHORT TERM DEBT LIMIT AND TO ISSUE
LONG TERM DEBT**

DOCKET NO. DE 09-033

**CONSERVATION LAW FOUNDATION'S
REPLY TO PSNH'S OBJECTION TO CONSERVATION LAW FOUNDATION'S
MOTION TO COMPEL PSNH'S RESPONSES TO DATA REQUESTS**

On July 24, 2009, Conservation Law Foundation ("CLF") moved to compel Public Service Company of New Hampshire ("PSNH") to respond to certain data requests. PSNH objected to CLF's motion to compel on August 3, 2009. CLF replies as follows.

The information sought by CLF is directly relevant to the Commission's review of "the economic impact of the proposed financing, its effect on PSNH's capital structure, and its potential impact on rates." *Commission Order Defining Scope of Proceeding*, No. 24,979 (June 19, 2009) ("Order") at 18. At bottom, PSNH argues that the discovery CLF seeks is not relevant because the Commission, despite the Order it just issued, must turn a blind eye to the impact of the financing on rates. Nothing in the Scrubber Law compels that result. Identifying the impact on rates, in light of the information CLF has requested, is not prohibited by the Scrubber Law, and indeed is required pursuant to *Easton*, as the Commission recognized in its Order. *See id.* The source and cost of energy is, of course, the most pertinent environmental issue facing New Hampshire (and the world) today, and CLF has a strong interest in ensuring a

transparent decision-making process in which relevant facts are unearthed and made available for public scrutiny.

First, PSNH seeks financing to fund, in part, \$123 million in Scrubber Project costs. PSNH's own data show that since December, 2008, 54% of PSNH's industrial sales have been lost to competitive suppliers and that the level of migration for PSNH's large customers increased from twenty-three megawatts as of September 12, 2008, to 102 megawatts as of November 20, 2008, as reported on December 2, 2008—a 343% increase in just two months. *See* CLF Motion to Compel at pp. 4-6. As the pool of ratepayers shrinks, the rate impact of the Scrubber Project will increase. Establishing that fact and taking it into account in this proceeding is not inconsistent with the Scrubber Law, and does not necessitate any action on the part of the Commission that would be contrary to that law.¹

Second, PSNH's commercial customers are already shopping, consistent with the national trend of declining demand for coal-fired power. And, overall energy demand (from all sources) is down, which is relevant to PSNH, notwithstanding RSA 369-B:3, IV (b)(1)(A) and RSA 374-F:3, V(f)(4).

Further, PSNH's argument that it is mandated to use the output of its generating plants to provide default service, *see* PSNH Objection to CLF's Motion to Compel ("Objection") at 7, suggests that PSNH believes it is legally required to sell the most polluting, most expensive electricity in the State to its default customers, and indeed it

¹ PSNH paints itself as a disinterested third party, merely attempting to comply with the mandate of the Legislature—nothing could be further from the truth. During a technical session on February 3, 2009, before the Commission in DE 08-145, counsel for PSNH represented that it is PSNH's position that the Scrubber Law allows PSNH to increase MK2's capacity by an unlimited, or "*infinite*" (PSNH's counsel's term) amount—in excess of any amount required merely to address parasitic load, without coming to the Commission in advance, and subject only to post hoc prudence review, and that PSNH drafted the Legislation to ensure that result.

does. But PSNH's position is contradicted by the State's energy policy, *see* RSA 378:37², and by the Legislature's requirement that PSNH's Least Cost Integrated Resource Plan ("LCIRP") take into account, among others, "[a]n assessment of the plan's long- and short-term environmental, economic and energy price and supply impact on the state." RSA 378:38. PSNH is required to supply default service from its generation assets—which it may supplement with market purchases—but PSNH also has an obligation to supply low cost energy and provide for the protection of the environment. Indeed, the Commission recently notified PSNH that it will be required, for future LCIRPs, to perform a continued unit operations study at Merrimack Station, finding that:

Early retirement of existing power plants for economic reasons is a practical option for utility planners *if continued operation entails the expenditure of significant investment dollars*. For this reason, we will require PSNH to include in future LCIRPs an economic analysis of retirement for any unit *in which the alternative is the investment of significant sums to meet new emissions standards and/or enhance or maintain plant performance*. PSNH will not, however, be required to include an analysis of divestiture in its next LCIRP as set forth in Order No. 24,695.

See Commission Order No. 24, 945, PSNH LCIRP Docket, Docket DE 07-108 (February 27, 2009), at 16 (emphasis supplied).

Third, PSNH's argument that it should not have to update the analysis it provided to the Commission in September 2008—despite the fact that PSNH's assumptions turned out to be dramatically wrong—would leave the Commission with no updated basis against which to compare the rate impacts attributable to the financing that will be used in part, to cover the costs of the Scrubber Project. And, PSNH cannot lawfully continue

² "The general court declares that it shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state **at the lowest reasonable cost** while providing for the reliability and diversity of energy sources; **the protection of the safety and health of the citizens, the physical environment of the state**, and the future supplies of nonrenewable resources; and consideration of the financial stability of the state's utilities." (Emphasis supplied).

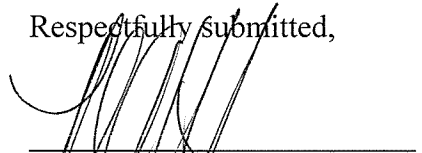
to rely on that faulty analysis and hold it out as accurate. *See, e.g.*, N.H. Admin. Rules PUC 203.09(k).

Fourth, PSNH's own decisions not to inform the Electric Utility Restructuring Oversight Committee of the Scrubber Project cost increase during the summer of 2008 (shortly before it filed its 10-Q with the federal Securities and Exchange Commission reporting that increase); not to come before the Site Evaluation Committee as it was required to do (as at least one member of the Commission has noted); not to comply with applicable regulatory requirements for its Temporary Permit application to the New Hampshire Department of Environmental Services; and not to comply with federal Clean Air Act requirements are the reasons why it now finds itself expending ratepayer funds litigating these issues (and responding to a federal EPA investigation).

Fifth, PSNH's multiple efforts to distract the Commission from the issues at hand are telling. That CLF opted to include additional requests in its formal data request is of no import.

WHEREFORE, CLF respectfully requests that the Commission grant CLF's motion to compel.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on this 6th day of August, 2009, a copy of Conservation Law Foundation's Reply to PSNH's Objection to CLF's Motion to Compel PSNH's Responses to Data Requests was served by electronic and first class mail on

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