

**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 Motions to Compel and Motions to Rescind Intervenor Status**

**ORDER NO. 25,646**

**April 8, 2014**

**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 or Company) at its coal-fired generation plant known as Merrimack Station. This order resolves a number of disputes that have arisen in the course of discovery.

In January 2014, PSNH issued separate data requests to the Office of Consumer Advocate (OCA), the New England Power Generators Association, Inc.,<sup>1</sup> TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (TransCanada), the Conservation Law Foundation (CLF), and the Sierra Club. OCA, TransCanada, and CLF objected to the number of questions and requested an order directing PSNH to submit a reasonable number of requests. The Commission denied those motions “based upon a lack of specificity” and “direct[ed] the parties to file objections to specific data requests in accordance with the discovery rules.” January 31, 2014, Secretarial Letter.

After OCA and the intervenors provided objections, PSNH filed the motions addressed in this order to compel answers from OCA and Sierra Club, and to rescind the intervenor status of

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<sup>1</sup> On February 24, 2014, NEPGA filed a letter withdrawing its intervenor status which the Commission acknowledged in a secretarial letter of March 12, 2014.

CLF and TransCanada or, in the alternative, to compel answers to PSNH's data requests. *See* PSNH filings of February 20 and 21, 2014. TransCanada, CLF, Sierra Club, and OCA filed objections on March 3, 2014.

## **II. POSITIONS OF THE PARTIES**

### **A. PSNH**

PSNH asked the Commission to rescind the intervenor status of CLF and TransCanada due to their alleged failure to answer PSNH's data requests or to raise appropriate objections. PSNH argued that TransCanada's and CLF's objections were without merit, and concluded that TransCanada's and CLF's conduct was abusive. PSNH claimed CLF's and TransCanada's "obstinacy" warranted the extraordinary relief of rescinding their intervenor status.

In the alternative, PSNH asked the Commission to compel TransCanada and CLF to answer the data requests. According to PSNH, TransCanada failed to answer approximately 100 requests and responded insufficiently to 23 others. *See* Attachments C and D to PSNH's motion to compel TransCanada. PSNH moved to compel CLF to respond to requests 1, 7, 8, 13, 19, 20, 23, 24, 26, 27, 32a, 33, 35-40, 59, 60, and 64.

PSNH also moved to compel responses from the OCA to requests 83-89, 93, 94, 103, and 104, and from Sierra Club responses to requests 25, 29, 30, 32, 34-39, 47, 51, 52, and 59.<sup>2</sup>

### **B. The Objecting Parties**

TransCanada and CLF objected to the motions to rescind their intervenor status arguing, first, that they did not engage in intentional misconduct but raised good faith objections to PSNH's many data requests. Second, they argued that the relief PSNH sought is extraordinary, that the Commission has never before rescinded a party's intervenor status for alleged discovery

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<sup>2</sup> By letter dated March 10, 2014, PSNH informed the Commission that the disputed requests with Sierra Club had been narrowed to those listed here.

abuses, and that only PSNH has ever requested such relief. TransCanada and CLF asked the Commission not to endorse PSNH's use of such an aggressive discovery tactic.

All four parties objected to PSNH's motions to compel and made arguments particular to the questions they declined to answer.

### **III. COMMISSION ANALYSIS**

#### **A. Motions to Rescind Intervenor Status**

We first address PSNH's motions to rescind the intervenor status of CLF and TransCanada. Revocation of intervenor status based on discovery misconduct should be reserved for unusual situations. PSNH argued that the manner in which TransCanada and CLF responded to data requests merits a dramatic response. We disagree. In this order we rule for and against PSNH on its motions to compel answers from CLF. PSNH is entitled to have some questions answered, but CLF raised legitimate objections to others. Although we deny PSNH's motion to compel responses from TransCanada and direct those parties to resolve their discovery issues in light of this order, PSNH would have similarly enjoyed mixed success with TransCanada. All parties share responsibility for the breakdown in the discovery process in this docket. PSNH's motions to rescind the intervenor status of TransCanada and CLF are thus DENIED.

#### **B. Standards Governing Motions to Compel**

To prevail on its motions to compel, PSNH must demonstrate that its data requests sought facts that are admissible or are reasonably calculated to lead to discovery of admissible evidence. *Public Service Co. of N.H.*, Order No. 25,334 at 9 (Mar. 12, 2012); *see City of Nashua*, Order 24,485 at 4 (July 8, 2005) ("Discovery is not the time to argue policy or advocate for the final result but merely to seek and respond to factual matters that may lead to admissible evidence").

Data requests are a “vehicle for developing factual information.” *Freedom Ring Communications, LLC d/b/a Bay Ring Communications*, Order No. 24,760 at 2 (June 7, 2007).

The Commission weighs “the effort needed to gather [the requested information], the availability of the information from other sources, and other relevant criteria.” *Public Service Co. of N.H.*, Order 25, 595 at 2-3 (Nov. 15, 2013); *City of Nashua*, Order No. 24,485 at 4. The Commission “enjoys ‘broad discretion in the management of discovery.’” *Public Service Co. of N.H.*, Order No. 24,342 at 23 (June 29, 2004) (*quoting YYY Corp. v. Gazda*, 145 N.H. 53, 59 (2000)).

Most of the disputes in the pending motions fall into one of the following five categories. We will explain our general reasoning for each category and then address PSNH’s motions to compel, question by question, referencing these standards by number.

### **1. Standard for Requests to Compel Legal Responses**

Some disputed requests called for statutory interpretations, legal opinions or characterizations, or sought comment on PSNH’s arguments and positions in this case. None of the witnesses whose testimony is involved in these motions is a lawyer. 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. *See Petition for Review of the Reasonableness of Certain Charges*, Order No. 25,576 at 3 (Sept. 25, 2013) (“We agree that the question asks for legal interpretation and legal conclusions regarding PSNH’s tariff and, therefore, we deny the motion to compel”); *Freedom Ring Communications d/b/a Bay Ring*

*Communications*, Order No. 24,760 at 2 (the Commission did not compel requests for “legal characterizations or argument from an opposing party”).

## **2. Standard for Requests of a Party Regarding its Witness’s Testimony**

PSNH directed a number of its requests at parties rather than the witnesses sponsored by those parties. To the extent these requests are related to the witnesses’ testimony we do not find dispositive the distinction between a party and its sponsored witness for purposes of discovery. We will thus compel answers to data requests directed toward the party if the requests are related to the testimony of its sponsored witness. PSNH also directed questions at parties that are *unrelated* to the testimony sponsored by those parties. We will generally not compel answers to those requests because they do not seek evidence relevant to that party’s witness and they could not provide impeachment evidence. Although it is possible that a party has information relevant to this docket but unrelated to the testimony of that party’s witness, we must draw some boundaries around discovery in this case. PSNH can explore the basis of a witness’s testimony through discovery directed at that witness and that party.

## **3. Standard Requests for Statements to Legislators or other Governmental Officials**

PSNH requested statements made or material provided to legislators or other governmental officials. Consistent with our decisions relating to Mr. Long’s deposition and PSNH’s motions to strike, evidence that proves whether a party was “cooperating with” or “attempt[ing] to block” legislation is irrelevant, *Public Service Co. of N.H.*, Order No. 25,566 at 5 (Aug. 27, 2013), but “information presented by PSNH and others before the legislature may be relevant to our determination,” *Public Service Co. of N.H.*, Order No. 25,592 at 6 (Nov. 1, 2013). *See Public Service Co. of N.H.*, Order No. 25,640 at 10 (Mar. 26, 2014) (order on motions to strike).

The reason that information provided by a party to others may be relevant is that such statements reflect the party's positions at some point in the past and provide information that could support or undermine the party's position in this docket. Nonetheless, relevance requires a nexus between the information provided by that party and its position in this case. A party's position on an issue unrelated to that taken in this docket is not relevant. Therefore, while we will not compel answers regarding efforts to persuade legislators, we will generally compel production of statements or information provided to lawmakers and other governmental officials so long as the subject matter is relevant to that party's position in this docket. *See Public Service Co. of N.H.*, Order No. 25,398 at 16 - 17 (Aug. 7, 2012) (granting TransCanada's motions to compel PSNH to provide "all presentations, data or other documents that it shared with DES to support the estimate of \$250 million" and "regarding how the costs of the Scrubber would be affected by the avoided SO2 allowance purchases").

PSNH's requests to identify the individuals who testified or provided information to government officials are relevant for similar reasons; it may allow PSNH to further investigate the information provided, but the identity of individuals who were merely present is not relevant.

#### **4. Standard for Requests for Admissions**

Some PSNH data requests are more accurately characterized as requests for admissions. Requests for admissions are an acceptable form of discovery before the Commission, although generally requiring pre-approval. *See* Puc 203.09(j) ("the commission shall authorize other forms of discovery, including ... methods permissible in civil judicial proceedings"). The rule governing requests for admission in superior court limits requests to "any relevant facts which [the proponent] believes *not to be in dispute*." Superior Court Rule 28(a) (emphasis added). The purpose for this language is to focus the use of this discovery tool to quickly and efficiently

narrow the disputed facts for discovery and trial. *Russo v. Baxter Healthcare Corp.*, 51 F.Supp.2d 70, 79 (D.R.I. 1999) (interpreting the similar Rule 36(a), Fed.R.Civ.P.). A request to admit a clearly disputed fact is inappropriate.

### **5. Standard for Requests for Facts and Data Underlying Expert Opinions**

Some PSNH requests sought documents related to the witnesses' expert opinions.

Subject to a valid privilege,

Disclosure of facts or data underlying expert opinions is permissible in discovery. In superior court, a party is entitled to disclosure of the opposing party's experts, the substance of the facts and opinions about which they are expected to testify, and the basis of those opinions. Failure to supply this information may result in exclusion of the expert testimony unless good cause is shown to excuse the failure to disclose.

*City of Nashua*, Order No. 24,681 at 9 (Oct. 23, 2006) (citations omitted). Although we do not adopt the requirements of the statute titled "Disclosure of Expert Testimony in Civil Cases," we generally agree with its requirements that a party must provide, either through prefiled testimony or discovery, "a complete statement of: (a) All opinions to be expressed and the basis and reasons therefor; (b) The facts or data considered by the witness in forming the opinions; [and] (c) Any exhibits to be used as a summary of or support for the opinions." RSA 516:29-b, II. Therefore, we will compel production of the facts, data, and supporting exhibits the witnesses considered in preparing testimony. Identification of a specific web link is also appropriate.

### **C. Motion to Compel OCA**

PSNH sought to compel OCA to answer requests 83-89, 93, 94, 103, and 104. We will address each request.

PSNH 1-83: Please provide a copy of any document provided to any elected or appointed government official in New Hampshire by OCA related to "An ACT relative to the reduction of mercury emissions" that took effect on June 8, 2006.

Response: Objection. The request is not reasonably calculated to lead to the discovery of information that is relevant and admissible in this proceeding.<sup>3</sup>

For the reasons discussed in standard 3, PSNH's motion to compel responses to PSNH 1-83 is GRANTED, limited to the time period during which the legislation was under consideration through June 8, 2006, and limited to documents the OCA provided that relate to the testimony of OCA's witnesses in this docket.<sup>4</sup>

PSNH 1-84: Please identify any individual employed by or otherwise compensated by OCA to work on its behalf concerning "An ACT relative to the reduction of mercury emissions" that took effect on June 8, 2006.

Response: Objection. The request is not reasonably calculated to lead to the discovery of information that is relevant and admissible in this proceeding.

For the reasons discussed in standard 3, PSNH's motion to compel responses to PSNH 1-84 is GRANTED, limited to the time period during which the legislation was under consideration through June 8, 2006, and limited to those individuals OCA employed or compensated to advance positions related to its witnesses' testimony.

PSNH 1-85: Please provide a copy of any document provided to any elected or appointed government official in New Hampshire by OCA related to Senate Bill 152 and House Bill 496 in 2009.

Response: Objection. The request is not reasonably calculated to lead to the discovery of information that is relevant and admissible in this proceeding.

For the reasons discussed above and in standard 3, PSNH's motion to compel a response to PSNH 1-85 is GRANTED, limited to the time period during which the legislation was

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<sup>3</sup> Throughout this order we repeat PSNH's data requests verbatim, but redact some of the objections and responses to include only the language relevant to our analysis.

<sup>4</sup> OCA's witnesses testified that PSNH should have reconsidered the economic feasibility of the Scrubber in 2008 and 2009 (Matthew I. Kahal), and that the Commission should apply the used and useful concept in reviewing the Scrubber's costs (Stephen R. Eckberg).



considered and limited to documents OCA provided that relate to the testimony of OCA's witnesses in this docket.

PSNH 1-86: Please identify any individual employed by or otherwise compensated by OCA to work on its behalf concerning Senate Bill 152 and House Bill 496 in 2009.

Response: Objection. The request is not reasonably calculated to lead to the discovery of information that is relevant and admissible in this proceeding.

For the reasons discussed above and in standard 3, PSNH's motion to compel answers to PSNH 1-86 is GRANTED, limited to the time period identified regarding PSNH 1-85 above and limited to those individuals OCA employed or compensated to advance positions related to its witnesses' testimony.

PSNH 1-87: Please provide all documents exchanged between OCA and the U.S. Environmental Protection Agency from 2006 to the present related to the "affected sources" as defined in RSA 125-O:12, I.

Response: Objection. The request is not reasonably calculated to lead to the discovery of information that is relevant and admissible in this proceeding.

PSNH 1-88: Please provide copies of any and all correspondence that OCA had with NHDES that pertains to the "affected sources" as defined in RSA 125-O:12, I.

Response: Objection. The request is not reasonably calculated to lead to the discovery of information that is relevant and admissible in this proceeding.

PSNH 1-89: Please provide copies of any and all documents that OCA provided to DES, any legislator or any state official concerning the "affected sources" as defined in RSA 125-O:12, I.

Response: Objection. The request is not reasonably calculated to lead to the discovery of information that is relevant and admissible in this proceeding.

These requests for information regarding RSA 125-O's definition of "affected sources" are overbroad and too remote to the subject of this docket. The motion to compel responses to PSNH 1-87, 1-88, and 1-89 is DENIED.

PSNH 1-93: Who if anyone attended hearings or testified before the Legislature on behalf of OCA relating to the consideration of House Bill 1673 during the 2006 legislative session? Provide copies of all documents provided to the legislature by OCA.

Response: Objection. The request is not reasonably calculated to lead to the discovery of information that is relevant and admissible in this proceeding.

For the reasons in standard 3, we GRANT the motion to compel OCA to provide the identity of any person testifying on its behalf and to provide a copy of the written testimony and any associated documents, but we DENY the motion to compel the identity of those who merely attended the hearing on behalf of OCA.

PSNH 1-94: Who if anyone testified before the Legislature on behalf of OCA relating to the consideration of House Bill 496 and/or Senate Bill 152 during the 2009 legislative session? Provide copies of all documents provided to the legislature by OCA.

Response: Objection. The request is not reasonably calculated to lead to the discovery of information that is relevant and admissible in this proceeding.

Based on standard 3 we GRANT the motion to compel a response to PSNH 1-94.

PSNH 1-103: The purpose clause of the Scrubber Law, RSA 125-O:11 finds installation of the scrubber to be in the public interest of the citizens of New Hampshire and the customers of the affected sources; it also refers to the careful and thoughtful balancing of the cost and benefits. OCA discusses some of the costs, but not the potential benefits.

- a. Please provide a listing of all possible "benefits" that the Legislature may have included in the referenced "balancing."
- b. Do you agree that maintenance of a tax base for state and property taxes is such a potential "benefit"? If your response to this question is no, please explain.

c. Do you agree continued viability of the rail line from Nashua to Concord is such a potential “benefit”? If your response to this question is no, please explain.

d. Do you agree fuel diversity in electric generation in the region is a potential “benefit”? If your response to this question is no, please explain.

e. Do you agree reliability of the electric grid in the region is a potential “benefit”? If your response to this question is no, please explain.

f. Do you agree the lessening of the state's dependence upon other sources of electrical power which may, from time to time, be uncertain is such a potential “benefit”? If your response to this question is no, please explain.

g. Do you agree the retention in-state of energy expenditures is a potential “benefit”? If your response to this question is no, please explain.

h. Do you agree the creation of jobs is such a potential “benefit”? If your response to this question is no, please explain.

i. Do you agree the retention of jobs is such a potential “benefit”? If your response to this question is no, please explain.

Response: Objection. The requests require speculation and are not reasonably calculated to lead to the discovery of information that is relevant and admissible in this proceeding.

PSNH 1-103 is a request to admit the legislature’s public interest findings in passing the Scrubber Law. PSNH 1-103 is not a proper request for admission, standard 4, and the OCA’s opinion on legislative findings is irrelevant. We thus DENY the motion to compel a response to PSNH 1-103.

PSNH 1-104: Is OCA intending to challenge in any manner the final reports produced by Jacobs Consultancy Inc. which was retained by the NHPUC to monitor and report on PSNH's Clean Air Project at Merrimack Station? If so, please explain and identify in detail all areas of the Jacobs’ reports you are challenging.

Response: Objection. The question is overly broad.

We interpret PSNH 1-104 to inquire about litigation strategy and we DENY the motion to compel this inquiry because it is outside the scope of discovery.

#### **D. Motion to Compel Sierra Club**

PSNH moved to compel Sierra Club to answer requests 25, 29, 30, 32, 34-39, 47, 51, 52, and 59.

PSNH-25. Provide any and all documents related to positions SC has taken, including the development of such positions, regarding any pollution control projects at the “affected sources” as defined in RSA 125-O:12, I (including the Scrubber), including, but not limited to:

- a. Board meeting minutes or notes (formal or informal);
- b. Meeting minutes or notes of any Board subcommittees or special committees;
- c. Notes or minutes from any committees within SC;
- d. Any internal notes or memoranda of any SC employee, agent, officer or board member; and
- e. Any electronic mail message, including attachments, or any other electronic communications.

Response. Sierra Club objects to Question 25 on the grounds that it is vague and ambiguous as to the terms “positions,” “taken,” “development,” and “pollution control projects,” is not reasonably calculated to lead to the discovery of evidence relevant to any cause or claim in this docket, is overly broad in that it appears to seek information unrelated to any cause or claim in this docket, is unduly burdensome, fails to be limited as to time, fails to be limited as to relevant subject matter, and improperly calls for the production of attorney-client privileged and/or work product protected materials.

PSNH-25 requested information that is unrelated to the testimony provided by Sierra Club’s witness, discovery standard 2. The question is over-broad and does not request relevant information. We DENY the motion to compel a response to PSNH-25.

PSNH-29. Please provide all fuel price forecasts relating to the price of coal, oil and natural gas available to SC from 2005 through 2012.

Response to Question 29. Sierra Club objects to Question 29 on the grounds that it is vague and ambiguous as to the term “available to SC from 2005 to 2012,” not reasonably calculated to lead to the discovery of evidence relevant to any cause or claim in this docket, is unduly burdensome in that the requested material is just as available to PSNH as it is to the Sierra Club, seeks material “available” to Sierra Club and not that actually in Sierra Club's possession, custody, or control, and is overly

broad in that it would seek production of information unrelated to any cause or claim in this docket.

Subject to and without waiving the objections above, the Sierra Club, understanding the term “available to SC from 2005 to 2012,” to reference materials that were themselves available to Sierra Club during the period from 2005 to 2012 (and not forecasts for that period), responds that such information is publicly available from sources such as the Energy Information Agency, [www.eia.gov](http://www.eia.gov).

Sierra Club’s witness, Dr. Ranajit Sahu, testified about the foreseeable environmental costs related to the Scrubber. This request is unrelated to Dr. Sahu’s testimony. We thus DENY the motion to compel a response to PSNH 1-29.

PSNH-30. Please provide a copy of any document provided to any elected or appointed government official in New Hampshire by SC related to “An ACT relative to the reduction of mercury emissions” that took effect on June 8, 2006.

Response to Question 30. Sierra Club objects to question 30 on the grounds that it is not reasonably calculated to lead to the discovery of evidence relevant to any cause or claim in this docket, is unduly burdensome, is overly broad in that it would seek production of information unrelated to any cause or claim in this docket, fails to be limited as to time, and fails to be limited as to relevant subject matter.

PSNH-32 Please provide a copy of any document provided to any elected or appointed government official in New Hampshire by SC related to Senate Bill 152 and House Bill 496 in 2009.

As discussed in standard 2, these requests are appropriate to the extent they seek information related to the topics discussed in Dr. Sahu’s testimony. We thus GRANT the motion to compel responses to PSNH-30 and PSNH-32, limited to information related to Dr. Sahu’s testimony and limited in time to the legislative session through the effective date of the Scrubber law and the dates SB 152 and HB 496 were defeated.

PSNH-34. Please provide all documents exchanged between SC and the U.S. Environmental Protection Agency from 2006 to the present related to the “affected sources” as defined in RSA 125-O:12, I.

Response to Question 34: Sierra Club objects to Question 34 on the grounds that it is not reasonably calculated to lead to the discovery of evidence relevant to any cause or claim in this docket, is overly broad in that it appears to seek information unrelated to any cause or claim in this docket, is unduly burdensome, is overly broad as to time, and fails to be limited as to relevant subject matter.

PSNH-35. Please provide copies of any and all correspondence that SC had with NHDES that pertains to the “affected sources” as defined in RSA 125-O:12 I.

PSNH-36. Please provide copies of any and all documents that SC provided to DES, any legislator or any state official concerning the “affected sources” as defined in RSA 125-O:12, I.

Response to Question 36: [ ] Additionally, Sierra Club responds that potentially responsive and relevant materials concerning Merrimack Station and causes or claims in this docket that Sierra Club has provided to the PUC in this docket are already readily available to PSNH.

PSNH-34, PSNH-35, and PSNH-36 sought information that is not related to the testimony provided by Dr. Sahu, are overbroad in their reference to “affected sources,” and are irrelevant. Therefore, we DENY the motion to compel responses to PSNH-34, PSNH-35, and PSNH-36.

PSNH-37. Please provide copies of any and all documentation that SC has regarding estimates of newly proposed coal and natural gas combined cycle generating stations in the 2008-2009 time frame.

PSNH-37 is directed at Sierra Club but is not related to Dr. Sahu’s testimony. For the reasons given in standard 2, we DENY PSNH’s motion to compel Sierra Club to provide a response to PSNH-37.

PSNH-38. Please provide copies of any and all documentation in SC's possession regarding the forward market for natural gas delivered to New England in the 2008 through 2011 time frame.

PSNH-39. Please provide any and all documentation in SC's possession related to the bus bar costs of power for a new coal or natural

gas combined cycle plant in New England during the 2008 to 2012 time period.

PSNH-38 and PSNH-39 present close calls. They are directed at Sierra Club but are not related to Dr. Sahu's testimony. They nonetheless seek relevant information because the parties argue that PSNH should have been aware of the New England forward market price for natural gas. To the extent Sierra Club has such information in its possession, we GRANT PSNH's motion to compel responses to PSNH-38 and PSNH-39 for the time period January 1, 2008, through December 31, 2011.

PSNH-47. Does SC agree that if a decision had been made to divest Merrimack Station during the 2008 to 2010 time period, the new owner would have been subject to the requirements of the scrubber Law? If not, explain your answer in full.

Response to Question 47: Sierra Club objects to Question 47 on the grounds that it is not reasonably calculated to lead to the discovery of evidence relevant to any cause or claim in this docket, impermissibly calls for speculation, and impermissibly calls for a legal conclusion.

PSNH-47 is a request to admit a legal proposition. For the reasons stated in standards 1 and 4, we DENY PSNH's motion to compel a response to PSNH-47.

PSNH-51. The purpose clause of the Scrubber Law, RSA 125-O:11 finds installation of the scrubber to be in the public interest of the citizens of New Hampshire and the customers of the affected sources; it also refers to the careful and thoughtful balancing of the cost and benefits. SC discusses some of the costs, but not the potential benefits.

- a. Please provide a listing of all possible "benefits" that the Legislature may have included in the referenced "balancing."
- b. Do you agree that maintenance of a tax base for state and property taxes is such a potential "benefit"? If your response to this question is no, please explain.
- c. Do you agree continued viability of the rail line from Nashua to Concord is such a potential "benefit"? If your response to this question is no, please explain.
- d. Do you agree fuel diversity in electric generation in the region is a potential "benefit"? If your response to this question is no, please explain.

e. Do you agree reliability of the electric grid in the region is a potential "benefit"? If your response to this question is no, please explain.

f. Do you agree the lessening of the state's dependence upon other sources of electrical power which may, from time to time, be uncertain is such a potential "benefit"? If your response to this question is no, please explain.

g. Do you agree the retention in-state of energy expenditures is a potential "benefit"? If your response to this question is no, please explain.

h. Do you agree the creation of jobs is such a potential "benefit"? If your response to this question is no, please explain.

i. Do you agree the retention of jobs is such a potential "benefit"? If your response to this question is no, please explain.

As with PSNH 1-103 directed at OCA discussed above, PSNH-51 is a request to admit the legislative findings in passing the Scrubber Law. PSNH-51 is not a proper request for admission, standard 4, and Sierra Club's opinion on legislative findings is irrelevant. We thus DENY the motion to compel a response to PSNH-51.

PSNH-52. Is SC intending to challenge in any manner the final reports produced by Jacobs Consultancy Inc. which was retained by the NHPUC to monitor and report on PSNH's Clean Air Project at Merrimack Station? If so, please explain and identify in detail all areas of the Jacobs' reports you are challenging.

Response to Question 52: Sierra Club objects to question 52 on the grounds that it is vague and ambiguous as to the terms "challenge," and "final reports," that it impermissibly calls for legal conclusions, and to the extent that it calls for the production of attorney-client or work product protected materials. Sierra Club reserves the right to evaluate and refine its legal strategy in advance of hearing in this Docket, the date for which has, at the time of this response, been taken off calendar.

PSNH-52 inquires of litigation strategy and is not designed to lead to the discovery of admissible evidence, and we therefore DENY the motion to compel a response to PSNH-52.

PSNH-59. Please provide copies of all SC's media releases, web site postings, blogs, twitter posting and the like concerning any of the "affected sources" as defined in RSA 125- O:12,1(including the Scrubber) from 2005 to present.



Response to Question 59: Sierra Club objects to Question 59 on the grounds that it is vague and ambiguous as to the terms "media releases," "twitter posting," and "and the like," it is not reasonably calculated to lead to the discovery of evidence relevant to any cause or claim in this docket, is overly broad in that it appears to seek information unrelated to any cause or claim in this docket, is unduly burdensome, fails to be sufficiently limited as to time, and fails to be limited as to relevant subject matter. Question 59 also seems to be largely redundant of Question 25.

We agree with Sierra Club that this question is vague, ambiguous, overbroad and not designed to lead to the discovery of admissible evidence, and we therefore DENY PSNH's motion to compel a response to PSNH-59.

#### **E. Motion to Compel CLF**

PSNH sought an order compelling CLF and its witness Dr. Elizabeth Stanton to answer requests 1, 7, 8, 13, 19, 20, 23, 24, 26, 27, 32a, 33, 35-40, 59, 60, 64, and 65 through 104.<sup>5</sup>

Using the categories discussed above, we address each request.

PSNH-1. To the extent not otherwise requested herein, produce your entire file pertaining to this matter, whether in hard copy or electronic form.

Objection: CLF objects to the extent that the file contains privileged work product or is unduly burdensome to produce, not reasonably calculated to lead to admissible evidence or broader than the requirements of RSA 516:29-b.

Response: Without waiving the objection, Dr. Stanton has produced detailed pre-filed testimony and supporting exhibits, together with her CV.

For the reasons stated in standard 5, PSNH's motion to compel a response to PSNH-1 is GRANTED as to the facts and data Dr. Stanton considered and supporting exhibits, to the extent not already produced, and DENIED as to documents that are subject to privilege.

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<sup>5</sup> We commend the format of CLF's objection in placing together the request, PSNH's argument, CLF's response and CLF's argument.

PSNH-7. Page 3: Regarding your experience with coal plants:

- a. Describe your experience working directly with coal plant operations and/or investment decision-making.
- b. Provide a detailed summary of your experience with large construction projects, particularly at coal-fired power plants, identifying the type of project, the plant, the cost of construction, the timeframe, and your role.
- c. Please provide a summary of all other site-specific work you have been involved with at coal-fired facilities.

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Response: Without waiving the objection, Dr. Stanton has not worked directly at coal-fired facilities.

PSNH argued Dr. Stanton's experience with coal-fired power plants is relevant, and this question asks for her experience working such plants. CLF said Dr. Stanton answered the question by saying she had not worked directly with coal-fired power plants. The question is broader than Dr. Stanton's answer and reasonably so. Dr. Stanton's wider experience, or lack thereof, may be relevant to her testimony. PSNH's motion to compel a response to PSNH-7 is GRANTED.

PSNH-8. Page 4: Have you or Synapse previously testified or provided expert services or reports to CLF? If so, please provide copies of all such testimony and reports. Also, describe any other services provided to CLF by you or Synapse.

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence; CLF also objects to the extent that this request seeks discovery of privileged work product or is impermissibly designed to shift the focus from the burden of proof on PSNH to CLF.

Response: Without waiving the objection, the non-privileged expert reports that Synapse has provided to CLF are available to PSNH via the internet; see response to No. 6.

PSNH argued it should not have to search for Dr. Stanton's reports and prior testimony. CLF argued it answered the question and provided PSNH with a link to responsive documents. PSNH's motion to compel a response to PSNH-8 is GRANTED as to the request for Dr. Stanton to "describe any other services provided to CLF by you or Synapse," and otherwise DENIED as answered.

PSNH-13. Page 6: Regarding your statement that a prudent utility manager should compare the costs of continued operation of the unit to the cost of providing the same energy services should the unit be retired, explain the phrase in parentheses ("the unit's revenues from the energy and capacity markets").

Response: Dr. Stanton will provide a response if PSNH does not withdraw the question.

This question was not rendered moot by our decision on the motions to strike. PSNH's motion to compel a response to PSNH-13 is GRANTED.

PSNH-19. Page 8: Provide New England emissions price forecasts in the 2008/2009 timeframe you relied upon.

Objection: CLF objects to the extent that these forecasts are in the public domain and are equally available to PSNH.

Response: Without waiving the objection, Dr. Stanton relied upon data from PSNH and Synapse.

PSNH argued it is entitled to the specific forecasts Dr. Stanton relied upon concerning changes in natural gas prices. Pursuant to standard 5 and to the extent not already provided, PSNH's motion to compel a response to PSNH-19 is GRANTED. As is the case throughout this order, CLF may provide the documents themselves or appropriate links.

PSNH-20. Page 8: Provide New England capacity price forecasts in the 2008/2009 timeframe you relied upon.

Objection: CLF objects to the extent that these forecasts are in the public domain and are equally available to PSNH. Moreover, Dr. Stanton has already identified the FCM forecasts in her testimony.

PSNH correctly argued that it is entitled to know the specific information Dr. Stanton relied upon, similar to request PSNH-19. Therefore, pursuant to standard 5 and to the extent not already provided, PSNH's motion to compel a response to PSNH-20 is GRANTED.

PSNH-23. Page 9: You state you examined a summary of invoiced expenses incurred by PSNH from April 2004 through April 2012.

- a. In your analysis did you use the pay date of invoices or the receipt date of invoices?
- b. How does your analysis address the timing of the number of outstanding invoiced costs both in the company's accounts payable system and in the invoicing process of the numerous businesses providing services to the Clean Air Project?
- c. How does your analysis address the indirect costs associated with the project such as AFUDC, labor, which are not "invoiced" but have been incurred as costs of the project.

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Response: Without waiving the objection, Dr. Stanton relied upon the data provided by PSNH in response to discovery in this docket.

PSNH's request is specific and relevant. PSNH has a right to know what Dr. Stanton relied upon. The answer is vague. Therefore, pursuant to standard 5, PSNH's motion to compel a response to PSNH-23 is GRANTED.

PSNH-24. Page 11: You indicate that you have developed an Excel spreadsheet to calculate cash flows. Please provide the Excel spreadsheet with all working formulas and a detailed explanation of all assumptions contained therein.

Response: See Stanton Exh. 4.

PSNH's motion to compel a response to PSNH-24 is DENIED as answered.

PSNH-26. Page 11: You discuss the information used to produce exhibit 4. You state that the reference case includes FGD. Please identify how the analysis includes the following:

- a. The in-service date.
- b. The assumed emission reduction percentage.
- c. The associated emissions reduction and the associated emission compliance cost reduction.
- d. Did the analysis revise the dollar cost average of the SO<sub>2</sub> allowances to reflect the lesser SO<sub>2</sub> emissions? If yes, provide the calculations. If not, why not?

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Response: Without waiving the objection, many of PSNH's questions can be answered by examining the EXCEL spread sheet prepared by Dr. Stanton.

PSNH's request is specific and directed to the data Dr. Stanton relied upon. Therefore, pursuant to standard 5, PSNH's motion to compel a response to PSNH-26 is GRANTED.

PSNH-27. Page 11: You discuss the information used to produce exhibit 4. You state the analysis includes the installation of an Activated Carbon Injection. Associated with this assumption, please provide the following:

An itemization of the total \$7M capital cost associated with the installation on each unit.

The operating and maintenance costs associated with the installation of these technologies on each unit.

All support for the \$1.37M in operating costs per year.

What emission reductions are assumed associated with the O&M costs identified in above?

What compliance requirement was referenced to determine the emission reduction selected for the analysis and provided above?

Please provide all documentation supporting your responses.

Response: Without waiving the objection, many of PSNH's questions can be answered by examining the EXCEL spread sheet prepared by Dr. Stanton.

PSNH is entitled to the requested information. *See* standard 5. To the extent the information is not contained within the spreadsheet or has not otherwise been provided or specifically identified, PSNH's motion to compel a response to PSNH-27 is GRANTED.

PSNH-32. Pages 13-14: Regarding your discussion of the "five scenarios analyzed" that "represent a range of possible future assumptions

regarding gas prices and environmental control requirements from the point of view of a prudent manager in March 2009:"

- a. Provide a qualitative description of the "state of the world" that serves as a rational basis for the development of each of the five scenarios.

Response: Without waiving the objection, the form of analysis used in my testimony does not take a "perspective on the probabilities of occurrence of each scenario" but rather is designed to explore the range of possible outcomes. Knowledge regarding the relative probability of future scenarios is difficult to obtain and fraught with uncertainties. The unpredictability of future events is not an excuse for failing to explore the scale of worse case outcomes and to present whatever is known about uncertain outcomes to decision makers and other stakeholders.

We find Dr. Stanton's answer sufficient and DENY PSNH's motion to compel a response to PSNH-32a.

PSNH-33. Page 14: You state that these scenarios are "typical of how a utility should project future cashflow".

- a. Provide examples of where you have projected cashflow for a utility in this manner.
- b. Provide any authoritative references supporting your assertion that this is typical of how a utility should project future cashflow.

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Response: Without waiving the objection, Synapse is routinely called upon to assess the work that utilities have done.

PSNH argued that its request sought specific and relevant information. CLF objected on the grounds of over breadth. We do not find the request to be overbroad and GRANT the request to compel an answer to PSNH-33. *See* standard 2.

PSNH-35. Page 15: You testify that the "assumptions represented in the Reference Case are what a prudent manager would have considered most likely in March 2009". Explain why each of the specific cost

components and assumptions behind the Exhibit 4 spreadsheet is “most likely”.

Objection: CLF objects to the extent that this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

Response: Without waiving the objection, the answer to much of this question is contained in Dr. Stanton’s pre-filed testimony.

Regarding PSNH-35 and PSNH-36 through PSNH-40, which follow, PSNH argued that it is “entitled to ask specific questions about the testimony to obtain information or explanations about the testimony as well as to limit Dr. Stanton's opinions.” Motion at 17. PSNH is generally correct, and PSNH-35 is such a specific question. PSNH’s motion to compel a response to PSNH-35 is therefore GRANTED as to Dr. Stanton’s “assumptions behind specific cost components.”

PSNH-36. Pages 15-16: Please provide the complete basis for your opinion that it would have been economically prudent for PSNH to consider retirement and/or divestiture for Merrimack in early 2009. Please explain, in detail, what you think would have occurred if PSNH had chosen to pursue either or both of those strategies.

Response: Without waiving the objection and to the extent that a response is required, Dr. Stanton’s opinion that PSNH should have considered retirement is set forth in her pre-filed testimony.

PSNH’s motion to compel a response to PSNH-36 is DENIED as answered. We expect Dr. Stanton will not offer any other basis for her opinions.

PSNH-37. Page 16: Please provide the basis for the conclusion that only PSNH’s sunk costs, as of March 2009, are recoverable as prudently incurred costs.

Does this opinion include any consideration of the benefits that the continued ownership and operation of Merrimack has produced for PSNH customers since March 2009?

If it does, please provide all such analysis.

If it does not, please explain why you did not include any consideration of such benefits.

Response: Without waiving the objection, please see Dr. Stanton's pre-filed testimony.

PSNH-38. Page 29: You show three energy price forecasts, including a "reference" forecast, a "high gas" forecast and a "low gas" forecast.

a. Explain why your reference natural gas price forecast appears to have higher natural gas prices than your high natural gas price forecast for a number of years over the relevant time period.

b. Explain why your reference natural gas price forecast appears to have natural gas prices as low as your low natural gas price forecast over the relevant time period.

Response: Without waiving the objection and to the extent that this request does not ask for information already contained in Dr. Stanton's pre-filed testimony, the figure below (reproduced from Stanton Exhibit 4) shows the high, reference, and low gas prices used to produce my testimony. The high gas prices appear to be higher than the reference gas prices and the low gas prices appear to be lower than the reference gas prices throughout the study period.

We find that Dr. Stanton answered these questions. We also find, however, that PSNH 37 is not relevant. PSNH's motion to compel a response to PSNH-37 and PSNH-38 is DENIED.

PSNH-39. Page 37: You show "Total Project Costs" for various environmental controls.

a. How were these costs estimated?

b. Are these costs in present value terms?

c. If so, what discount rate was used? If not, why not?

Response: Without waiving the objection, please refer to Stanton Exh. 4, the EXCEL spreadsheet.

PSNH's motion to compel a response to PSNH-39 is DENIED as to 39(a) because we previously ordered production of all data Dr. Stanton relied upon. PSNH's motion is GRANTED as to 39(b) and 39(c) because Dr. Stanton's answers are not clear from Exhibit 4, the questions are direct and reasonable, and they should not be burdensome to answer.

PSNH-40. Page 37: For the "low" environmental controls scenario, you estimate "Wet Cooling Tower Capital Costs" of \$0.51 million for Unit 1 and \$1.35 million for Unit 2.



- a. Are these costs of wet cooling towers or of impingement controls, as indicated on page 30?
- b. What is the basis for these cost estimates?

Response: Without waiving the objection, please refer to Stanton Exh. 4, the EXCEL spreadsheet.

CLF argued that this question merely asks Dr. Stanton to restate her testimony and that the spreadsheet answers the requests. We agree in part. The motion to compel a response to PSNH-40(a) is GRANTED, and PSNH-40(b) is DENIED as answered.

PSNH-59. In Exhibit 4, page 12, please provide all back up for the FGD O&M costs of \$3.91M (Merrimack Unit 1 equal to \$1.86M and Merrimack Unit 2 equal to \$2.05M).

Response: Without waiving the objection, as cited in Stanton Exhibit 4, the sources for these data assumptions are EIA 860 2012, EIA 923 2012, EPA IPM v4.1 Appendix 5-1a (Sargent & Lundy), EPA IPM v4.1 Appendix 5-2a (Sargent & Lundy), EPA IPM v4.1 Appendix 5-5 (Sargent & Lundy), EPA IPM v4.1 Appendix 5-3 (Sargent & Lundy), EPA Technical Development Document for 316(b), 2010 EPRI Cost Assessment of Coal Combustion Residuals, 2011 EEI Potential Impacts of Environmental Regulation, 2010 EPRI Cost Assessment of Coal Combustion Residuals, 2011 EEI Potential Impacts of Environmental Regulation, and EPA Effluent Limitations Guidelines 2013.

PSNH-60. Exhibit 4 and 6 provide the analysis's "Environmental Retrofit Assumptions". Please provide all documentation and back-up for the following:

- a. Capital costs, installation assumptions and associated O&M costs for "Baghouse", including costs for each unit. Please explain its use in the analysis given that under all scenarios the assumption is none.
- b. Capital cost, installation assumptions and associated O&M costs for "ACF", including detailed costs for each unit.
- c. Capital costs, installation assumptions and associated O&M costs for "Cooling", including detailed costs for each unit. Specifically detail the low case amount of \$1.86M, the reference case of \$28.94M and the high case of \$39.14M.
- d. Capital costs, installation assumptions and associated O&M costs for "Coal Combustion Residuals", including detailed costs for each unit.

e. Capital costs, installation assumptions and associated O&M costs for “Effluent”, including detailed costs for each unit.

Response: Without waiving the objection, as cited in Stanton Exhibit 4, the sources for these data assumptions are EIA 860 2012, EIA 923 2012, EPA IPM v4.1 Appendix 5-1a (Sargent & Lundy), EPA IPM v4.1 Appendix 5-2a (Sargent & Lundy), EPA IPM v4.1 Appendix 5-5 (Sargent & Lundy), EPA IPM v4.1 Appendix 5-3 (Sargent & Lundy), EPA Technical Development Document for 316(b), 2010 EPRI Cost Assessment of Coal Combustion Residuals, 2011 EEI Potential Impacts of Environmental Regulation, 2010 EPRI Cost Assessment of Coal Combustion Residuals, 2011 EEI Potential Impacts of Environmental Regulation, and EPA Effluent Limitations Guidelines 2013.

CLF answered these requests, and we thus DENY PSNH’s motion to compel responses to PSNH-59 and PSNH-60. Nonetheless, if the referenced documents are not part of the file CLF produced, then CLF shall provide a link to or otherwise make the documents available.

PSNH’s prayer for relief seeks an order compelling a response to PSNH-64, but the body of PSNH’s motion does not contain any argument in support of this request (and CLF did not provide any argument). Therefore, PSNH’s motion to compel a response to PSNH-64 is DENIED.

PSNH’s motion to compel summarily addressed the balance of its requests of CLF: “CLF’s form objections to Requests 65-104 are facially inadequate. Given the defects in those objections, the Commission should strike these objections and order CLF to provide an answer to each of these Requests.” Motion at 12. PSNH conducted no specific analysis of these requests and did not include them in its prayer for relief. *See* Motion at 18. CLF, however, engaged in a thorough review of each request and argued that we should deny the motion to compel. Although we could simply deny PSNH’s motion to compel responses to requests 65 through 104 for lack of development, *Verizon New England*, Order No. 24,789 at 4 (Sept. 21, 2007), given

CLF's thorough responses and the relative ease with which PSNH could renew the motion, we will address the requests as we have done above.<sup>6</sup>

PSNH-65. Provide any and all documents related to positions CLF has taken, including the development of such positions, regarding any pollution control projects at the "affected sources" as defined in RSA 125-O:12, I (including the Scrubber), including, but not limited to:

- a. Board meeting minutes or notes (formal or informal);
- b. Meeting minutes or notes of any Board subcommittees or special committees;
- c. Notes or minutes from any committees within CLF,
- d. Any internal notes or memoranda of any CLF employee, agent, officer or board member; and
- e. Any electronic mail message, including attachments, or any other electronic communications.

Objection: CLF objects to this data request because it is directed to CLF rather than directed to Dr. Stanton's pre-filed testimony; the procedural order dated November 15, 2013 clearly states that data requests are to be on pre-filed testimony and CLF will not testify at hearing. CLF further objects to the extent that this request is designed to either discover work product or to impermissibly harass and burden CLF rather than to discover information related to whether PSNH was prudent in its decision-making. PSNH bears that burden of proof, and the focus of the inquiry should not be on CLF and its internal decision-making processes. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence.

As we articulated in discovery standard 2, we will compel parties to respond to data requests if the subject matter is relevant to its witness's testimony. CLF's witness Dr. Stanton testified that PSNH should have conducted certain cash flow analyses as the cost of the Scrubber increased. PSNH-65 is unrelated to that testimony. We thus DENY the motion to compel CLF to respond to PSNH-65.

PSNH-66. Is it CLF's position that if PSNH suspended and cancelled the scrubber project after prudently incurring costs, but before

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<sup>6</sup> CLF provided responses to eight of these requests, numbers 67, 69, 77-79, 90, 92, and 94. We consider the remaining data requests between 65 and 104.

the scrubber actually provided service to consumers, PSNH would be able to recover the costs it had expended? If not, why not?

For the reasons in standard 1, we DENY the motion to compel CLF to respond to PSNH-66 as seeking a legal conclusion.

PSNH-67. Please provide copies of all economic analyses in the possession of CLF concerning the flue gas scrubber at Merrimack Station.

Objection: CLF objects to this data request because it is directed to CLF rather than directed to Dr. Stanton's pre-filed testimony; the procedural order dated November 15, 2013 clearly states that data requests are to be on pre-filed testimony and CLF will not testify at hearing. CLF further objects to the extent that this request is designed to either discover work product . . .

PSNH-67 asked for information relevant to Dr. Stanton's testimony, so if CLF has such information in its possession, then it should not be burdensome to produce. Therefore, we GRANT the motion to compel a response to PSNH-67.

PSNH-68. Please provide copies of all economic analyses in the possession of CLF concerning the ability of PSNH to request a "variance" under RSA 125-O:17.

Objection: CLF objects to this data request because it is directed to CLF rather than directed to Dr. Stanton's pre-filed testimony; the procedural order dated November 15, 2013 clearly states that data requests are to be on pre-filed testimony and CLF will not testify at hearing. CLF further objects to the extent that this request is designed to either discover work product or to impermissibly harass and burden CLF rather than to discover information related to whether PSNH was prudent in its decision-making. PSNH bears that burden of proof, and the focus of the inquiry should not be on CLF and its internal decision-making processes. For these reasons, this request is overbroad, unduly burdensome and not reasonably calculated to lead to admissible evidence. Moreover this request seeks a legal conclusion, and the Commission has already determined or will determine the ability of PSNH to seek a variance under RSA 125-O:17.

Contrary to CLF's claim, we do not find that this question called for a legal conclusion; rather, it asked for any economic analyses in CLF's possession regarding the ability of PSNH to

request a variance, a matter that is arguably within the scope of Dr. Stanton's testimony.

Therefore, we GRANT the motion to compel a response to PSNH-68.

PSNH-69. Please provide all fuel price forecasts relating to the price of coal, oil and natural gas available to CLF from 2005 through 2012.

Response: Without waiving the objection and to the extent that this request does seek a valid disclosure of data, CLF has already identified the fuel price forecasts that Dr. Stanton relied upon in formulating her opinions.

This information is relevant to the fuel forecasts that PSNH used in developing its economic analysis of the Scrubber. While we appreciate that CLF's witness has her own source of fuel price forecasts, if CLF has responsive information, then it should be able to produce such information with little trouble. Therefore, we GRANT the motion to compel a response to PSNH-69, limited to the period 2005 through 2011.

PSNH-70. Please provide a copy of any document provided to any elected or appointed government official in New Hampshire by CLF related to "An ACT relative to the reduction of mercury emissions" that took effect on June 8, 2006.

We previously stated that information presented to the legislature is relevant to this proceeding. Discovery standard 3. Consistent with similar rulings above, we GRANT the motion to compel a response to PSNH-70 regarding documents provided to the legislature or other government official during the legislative session that led up to the enactment of the Scrubber law and related to Dr. Stanton's testimony.

PSNH-71. Please identify any individual employed by or otherwise compensated by CLF to work on its behalf concerning "An ACT relative to the reduction of mercury emissions" that took effect on June 8, 2006.

PSNH-72. Please provide a copy of any document provided to any elected or appointed government official in New Hampshire by CLF related to Senate Bill 152 and House Bill 496 in 2009.

As we previously stated this information is relevant, and we GRANT the motion to compel responses to PSNH-71 and PSNH-72 for the time period during which the Legislature considered the Scrubber Law (PSNH-71) and the bills referred to in PSNH-72. *See* standard 3.

PSNH-73. Please identify any individual employed by or otherwise compensated by CLF to work on its behalf concerning Senate Bill 152 and House Bill 496 in 2009.

Consistent with standard 3 and our rulings on request PSNH 1-86 directed to OCA, we GRANT the motion to compel a response to PSNH-73, limited to those individuals employed or compensated by CLF to advance positions related to Dr. Stanton's testimony in this docket during the relevant time.

PSNH-74. Please provide all documents exchanged between CLF and the U.S. Environmental Protection Agency from 2006 to the present related to the "affected sources" as defined in RSA 125-O:12, I

PSNH-75. Please provide copies of any and all correspondence that CLF had with NHDES that pertains to the "affected sources" as defined in RSA 125-O:12, I.

PSNH-76. Please provide copies of any and all documents that CLF provided to DES, any legislator or any state official concerning the "affected sources" as defined in RSA 125-O:12, I.

These questions are the same questions PSNH asked of Sierra Club (*see* discussion of PSNH-34, 35, and 36 to Sierra Club above). They seek information unrelated to Dr. Stanton's testimony, are overbroad in their references to "affected sources," and are irrelevant. Therefore, we DENY the motion to compel responses to PSNH 74, 75, and 76.

PSNH-80. Who if anyone attended hearings or testified before the Legislature on behalf of CLF relating to the consideration of House Bill 1673 during the 2006 legislative session? Provide copies of all documents provided to the legislature by CLF.

Consistent with standard 3 and the same questions asked of OCA (PSNH-93 to OCA), we GRANT the motion as to who testified and a copy of the testimony, but we DENY the motion to compel as to who attended the hearing on behalf of CLF as irrelevant.

PSNH-81. Who if anyone testified before the Legislature on behalf of CLF relating to the consideration of House Bill 496 and/or Senate Bill 152 during the 2009 legislative session? Provide copies of all documents provided to the legislature by CLF.

In standard 3 we found the information requested by this discovery request to be relevant and we GRANT the motion to compel a response to PSNH-81.

PSNH-82. Is it your opinion that a person of requisite skill and experience would deem compliance with applicable law to be a reasonable goal? If not, please explain why not.

PSNH-83. Is it your opinion that a highly trained specialist would deem compliance with applicable law to be a reasonable goal? If not, please explain why not.

PSNH-85. Does CLF contend that the Scrubber Law, RSA 125-O:11 - 18 does not mandate the installation and operation of scrubber technology at Merrimack Station?

These requests asked for legal opinions of dubious relevance, *see* discovery standard 1, thus we DENY the motion to compel responses to PSNH-82, 83, and 85.

PSNH-84. Does CLF have any requirement, such as but not limited to a corporate compliance program, that mandates compliance with applicable laws? If so, please provide copies of all documents describing such programs.

This request sought irrelevant information, and we thus DENY the motion to compel a response to PSNH-84.

PSNH-86. Does CLF contend that installation and operation of scrubber technology at Merrimack Station resulted from a discretionary decision made by PSNH management?

We DENY the motion to compel a response to PSNH-86 for the reasons stated in standard 1.

PSNH-87. Does CLF agree that if a decision had been made to divest Merrimack Station during the 2008 to 2010 time period, the new owner would have been subject to the requirements of the Scrubber Law? If not, explain your answer in full.

PSNH-88. Does CLF contend that if a decision had been made to divest Merrimack Station during the 2008 to 2010 time period, a willing buyer would have been available? If so, please detail the price that CLF believes a reasonable buyer would have offered, an explanation of the foundation for that price, and a statement of any and all conditions to purchase such buyer would reasonably have required.

PSNH-89. Does CLF agree that if PSNH had the legal ability to retire Merrimack Station and did so, it would still be the owner of that facility, absent a divestiture? If CLF does not agree, please provide the reasoning for such disagreement.

PSNH-90. Is it CLF's position that the Scrubber Law included a not to exceed price of \$250 Million?

PSNH-91. The purpose clause of the Scrubber Law, RSA 125-O:11 finds installation of the scrubber to be in the public interest of the citizens of New Hampshire and the customers of the affected sources; it also refers to the careful and thoughtful balancing of the cost and benefits. CLF discusses some of the costs, but not the potential benefits. (remainder of question omitted; see PSNH-51 to Sierra Club above).

PSNH-87 through 91 asked for speculation and legal conclusion or statutory interpretation, questions we determined to be irrelevant, discovery standard 1, and we thus DENY the motion to compel responses to PSNH 87-91.

PSNH-92. Is CLF intending to challenge in any manner the final reports produced by Jacobs Consultancy Inc. which was retained by the NHPUC to monitor and report on PSNH's Clean Air Project at Merrimack Station? If so, please explain and identify in detail all areas of the Jacobs' reports you are challenging.

We DENY the motion to compel a response to PSNH-92 because it asks for litigation strategy.



PSNH-93. Does CLF agree that the price of natural gas has historically demonstrated high volatility?

PSNH-93 is vague and ambiguous. We thus DENY the motion to compel a response to PSNH-93.

PSNH-94. Does CLF agree that economic analyses of the scrubber project performed in the 2008 to 2009 time period would have required educated guesses about what the energy market might be going forward over the subsequent five to ten years?

PSNH-94 is an improper request for admission, standard 4. On that basis, we DENY the motion to compel a response to PSNH-94.

PSNH-96. Provide copies of any requests for documents under the Freedom of Information Act related to Merrimack Station or the Scrubber Project during the period 2005 to present that CLF made to any federal agency and all responses received pursuant to those requests.

PSNH-97. Did CLF make any requests for documents under RSA 91-A related to Merrimack Station or the Scrubber Project during the period 2005 to present with any agency, instrumentality or municipality of the State of New Hampshire? If so, please provide copies of all such requests and all responses received pursuant to those requests.

PSNH-98. Did CLF have any discussions with and state or federal agencies related to Merrimack Station or the Scrubber during the period 2005 to present? If so please provide details of such conversations, including but not limited to

- a. The identity of the agency;
- b. The identity of agency officials who participated in or were present at the discussions;
- c. The dates of those discussions;
- d. The subject matter of those discussions;
- e. The location of those discussions;
- f. The reason for those discussions; and
- g. Copies of all documents produced by CLF at those discussions or received from the agency.

PSNH-96, 97 and 98 were directed to CLF, are not related to Dr. Stanton's testimony, and otherwise sought irrelevant information. CLF's actions are not subject to review in this docket. Therefore, we DENY the motion to compel responses to PSNH-96, 97, and 98.

PSNH-99. What is CLF's position regarding fracking?"

PSNH-100. What actions has CLF taken to advocate for its position regarding fracking?

PSNH-101. Does CLF have a reasonable expectation that it will materially impact the production of natural gas by fracking?

PSNH-102. If there is such a material impact on the production of natural gas, what impact would that have on natural gas prices?

PSNH-99, 100, 101, and 102 are irrelevant to this proceeding and we DENY the motion to compel responses.

PSNH-103. Has CLF taken any position regarding the development of the Footprint natural gas fueled generating station in Salem, Massachusetts? If so, please explain CLF's position

PSNH-103 is irrelevant to this proceeding, and the motion to compel a response to this question is DENIED.

PSNH-104. Please provide copies of all CLF's media releases, web site postings, blogs, twitter posting and the like concerning any of the "affected sources" as defined in RSA 125-O:12, I (including the Scrubber) from 2005 to present.

Objection: CLF objects to this data request because it is directed to CLF rather than directed to Dr. Stanton's pre-filed testimony; the procedural order dated November 15, 2013 clearly states that data requests are to be on pre-filed testimony and CLF will not testify at hearing.

Similar to questions asked of Sierra Club, this request will not lead to the discovery of admissible evidence, and the documents requested are irrelevant. Therefore, the motion to compel a response to PSNH-104 is DENIED.

### **F. Motion to Compel TransCanada**

PSNH claimed that TransCanada failed to answer approximately 100 requests and provided insufficient responses to 23 others. *See* Attachments C and D to PSNH's motion to compel TransCanada. We are troubled by the apparent breakdown of the discovery process between PSNH and TransCanada. TransCanada does not seem to have made a good faith effort to provide PSNH the information to which it is entitled, and PSNH requested far too much. Puc 203.09(i)(4) requires "a good faith effort to resolve the dispute [over discovery] informally" before filing motions to compel. *See Freedom Ring Communications, LLC d/b/a Bay Ring Communications*, Order No. 24,760 at 1 (Puc 203.09(i)(4) is "a critical aspect of our rule governing the resolution of discovery disputes"). We recognize these adversaries are vigorously advocating their respective positions, but both are represented by experienced and able counsel who know the rules governing discovery, who were involved in some of the discovery orders cited here, and who are obligated to rise above the partisan fray and engage in a good faith effort to resolve these disputes.

We thus direct PSNH and TransCanada to make a good faith effort to resolve their outstanding discovery disputes using the discovery standards and rulings in this order as guidance.

As additional guidance, we note that PSNH directed questions at TransCanada affiliates that are not parties to this docket. Discovery is generally limited to "any party." Puc 203.09(b). We granted intervenor status to TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. December 23, 2011, Secretarial Letter. Only those TransCanada entities are parties to this case and we will not compel TransCanada to answer questions directed at other TransCanada affiliates. Nonetheless, if PSNH can make a particularized showing that it has a

substantial need for specific information from a non-party TransCanada affiliate, which information is necessary to this docket and not otherwise available, we will consider such a request.

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

**ORDERED**, that based on the foregoing, it is hereby ordered that the motions to rescind the intervenor status of TransCanada and CLF are DENIED; and it is

**FURTHER ORDERED**, that as discussed and occasionally limited above, PSNH's motion to compel OCA to answer data requests is GRANTED as to requests 83-86 and 94; DENIED as to requests 87, 88, 89, 103, and 104; and GRANTED in part and DENIED in part as to request 93; and it is

**FURTHER ORDERED**, that as discussed and occasionally limited above, PSNH's motion to compel Sierra Club to answer data requests is GRANTED as to requests 30, 32, 38, and 39; and DENIED as to requests 25, 29, 34 through 37, 47, 51, 52, and 59; and it is

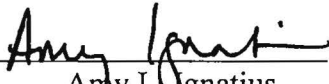
**FURTHER ORDERED**, that as discussed and occasionally limited above, PSNH's motion to compel CLF to answer data requests is GRANTED as to requests 7, 13, 19, 20, 23, 26, 27, 33, 35, 67-69, 70-73, and 81; DENIED as to requests 24, 32a, 36-38, 59, 60, 64-66, 74-76, 82-94, and 96-104; and DENIED in part and GRANTED in part as to requests 1, 8, 39, 40, and 90; and it is

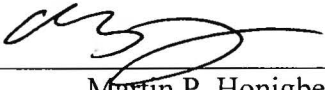
**FURTHER ORDERED**, that PSNH's motion to compel TransCanada to answer data requests is DENIED, without prejudice; and it is

**FURTHER ORDERED**, that counsel for PSNH and TransCanada are directed to reconsider their respective positions in light of this order, meet face-to-face to review the


outstanding data requests and, if necessary, PSNH may re-file a motion to compel by April 18, 2014.

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

  
\_\_\_\_\_  
Amy L. Sognatius  
Chairman

  
\_\_\_\_\_  
Martin P. Honigberg  
Commissioner

Attested by:

  
\_\_\_\_\_  
Debra A. Howland  
Executive Director

**SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED**

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Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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