

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

DE 10-261

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
2010 Least Cost Integrated Resource Plan**

Motion to Compel PSNH to Respond to Data Request TC 3-2

NOW COMES TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (“TransCanada”), an intervenor in this docket, and moves this Honorable Commission, pursuant to Admin. Rule Puc 203.09 (i), to compel Public Service Company of New Hampshire (“PSNH”) to respond to the data request which TransCanada submitted to PSNH on June 3, 2011 described in more detail below. In support of this Motion TransCanada states as follows:

1. As the Commission noted in the Order of Notice in this docket, PSNH’s initial filing included a “continuing unit operation study” for Newington Station as had been directed by the Commission in the last least-cost integrated resource plan (“LCIRP”) proceeding. See *Re Public Service Company of New Hampshire*, Order No. 24,945, 94 NH PUC 103, 111 (2009). In the Order of Notice the Commission also noted that the filing raises “issues related to whether PSNH’s planning process is adequate as defined by the requirements set forth in RSA 378:38 and 39 and Order No. 24,945 and whether it is consistent with RSA Chap. 374-F and RSA 369-B:3a.” Order No. 24,945, the order cited above that the Commission issued in PSNH’s 2007 LCIRP, required that PSNH “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.” 94 NH PUC at 111.

2. On June 3, 2011 TransCanada submitted the following data request to PSNH:

Please provide Newington annual generation, costs, revenues, profit margins and profitability indices from the GE-MAPS model runs prepared for Northeast Utilities by Charles River Associates (“CRA”) as part of CRA’s study entitled “LMP and Congestion Impacts of Northern Pass Transmission Project”, dated December 7, 2010. The data requested should be provided for scenarios both with and without the Northern Pass Transmission line.

3. On June 13, 2011 PSNH responded as follows:

According to the Secretarial letter dated May 9, 2011 in this proceeding, the third round of data requests to be served on June 3, 2011 was limited to questions derived from New Levitan Data supplied to the parties on April 26, 2011. PSNH therefore objects to this data response [sic] as not timely. Furthermore, the CRA Study was issued several months after PSNH’s Least Cost Plan filing was prepared and submitted; therefore, the information in that study was unavailable to the persons preparing the PSNH Least Cost Plan.

4. The requested information regarding the CRA Study goes to the very heart of one of the issues that the Commission has indicated is a critical part of this docket, i.e. evaluating the continued operation of Newington Station. The benefit of making this information available for review by Staff, the OCA and intervenors like TransCanada who have the expertise and experience to assist the Commission in evaluating these issues, is of prime importance to this docket. Denying the parties to this docket and ultimately the Commission access to this information precludes the Commission’s ability to evaluate whether the continued operation of Newington makes economic sense and would limit the Commission’s ability to carry out its responsibility of evaluating the adequacy of the utility’s planning process and evaluating the Company’s primary objective of developing and implementing “an integrated resource plan that satisfies

customer energy service needs at the lowest overall cost consistent with maintaining supply reliability.” 94 NH PUC at 109. Allowing PSNH to refuse to provide the information at issue will also restrict TransCanada and other intervenors’ ability to protect their “rights, duties, privileges, immunities or other substantial interests” that may be affected by this proceeding. See RSA 541-A:32; Admin. Rule Puc 203.17.

5. The long-standing standard that the Commission has used to evaluate discovery requests is whether the information being requested is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. *Re Verizon New England, Inc., et al*, 92 NH PUC 234, 236 (2007). The request at issue here clearly passes the first part of this test; it asks for revenue and profit margin information at the generation level pertaining to Newington Station and it is from an analysis commissioned by Northeast Utilities, PSNH’s parent company, that contains information that relates directly to Newington Station and the economics of its continued operation, issues that are relevant to this proceeding. As the Commission made clear in the Order of Notice in this docket, and as Staff has made clear throughout this proceeding, the evaluation of the continued operation of Newington Station is a critical part of this docket. Any and all information available about analyses that PSNH or its affiliates have done to evaluate the operation of Newington Station, in whatever context, that might shed light on this important issue in this docket should be produced and available for review by the parties. Moreover, the information being requested here clearly could lead to the discovery of evidence that would be admissible in this docket (the second part of the Commission’s test referenced above) as it would relate directly to Newington Station and thus to the continuing unit operation study that is an important part of this proceeding.

6. PSNH's first objection to the data request is that the request goes beyond the scope of round three of the data requests. This docket is still in the initial stages; hearings are not scheduled to take place until mid December, 2011; Staff and intervenor testimony under the latest proposed modification to the schedule is not due until July 27, 2011. Requiring PSNH to produce this important information at this point in the docket will not adversely affect the schedule, will not unduly prejudice PSNH, and could contribute significantly to the analysis that is critical for the Commission to make an informed decision in this docket. *See* RSA 374:4 (duty to keep informed). The "New Levitan Data" that PSNH refers to in its response (although characterized in discussion as minor and inconsequential by PSNH) amounts to significant changes in the Levitan study resulting from an error that they made.¹ This "new data" required them to submit 42 corrected pages to the original plan and modified responses to the second round of data requests that they had provided earlier in the schedule. This "new data" and the magnitude of the course correction implied by it have also resulted in a needed change in the discovery schedule that disrupted the flow of information from PSNH to the parties. See the April 26, 2011 PSNH letter in this docket and the corrected pages to the original plan.

7. Once TransCanada became aware of the full extent of the errors contained in the Levitan study, i.e., after the corrections submitted on April 26, 2011, and once it became aware of related representations that PSNH was making with regard to energy cost savings that would be realized from the Northern Pass project (see redacted May 11, 2011 letter that PSNH CEO Gary Long sent to large power customers attached as Exhibit

¹ The Levitan study covers the time period 2011 to 2020; according to the CRA Study, Northern Pass will provide capacity to deliver up to 1,200 MW of power and will lower New England power prices and reduce costs for wholesale load customers beginning in 2015.

A), TransCanada searched for additional information and came across a reference to the CRA study on the Northern Pass website. It was thus the error by PSNH's consultant and recent representations made by PSNH that precipitated the search for further information and that led to the data request at issue here.

8. This significant error by PSNH's own consultant came after the first two rounds of discovery had been completed. It would thus be unfair to limit the scope of the third round of data requests in the manner that PSNH suggests. The information being requested resulted directly from the error committed by PSNH's consultant that created the need for the third round of data requests and that information constitutes a potentially important contribution to the assessment of the Levitan error. The purpose of this data request is not to delay the proceedings, but to ensure that the Commission is able to evaluate critically the continuing operation of Newington Station.

9. In addition, PSNH should have provided the information regarding the CRA Study in response to TransCanada's first round of data requests. Specifically, in the first round of data requests, sent to PSNH in this docket on January 27, 2011, TransCanada asked PSNH if it believed that it would achieve the Net Energy Revenue identified in the previous data request. The instructions that accompanied the data request contained the following:

In answering these data requests, you shall divulge all information in your possession, control or available to you, including information in the possession or control of your agents, representatives, or any other persons acting on your behalf, and not merely such information as is known by you answering these data requests based on your personal knowledge.

TransCanada submits that PSNH's failure to divulge the relevant data from the CRA Study, which relates directly to the net energy revenue calculations, in response to this

question thus violated the instructions. Copies of TC 1-20 and 1-21 and the responses provided are attached as Exhibit B. Further to this point, in the third round in TC-03, dated 06/03/2011 in Q-TC-021 TransCanada asked in part:

- A. Please identify and describe all analyses, studies, reviews, and any other analytical effort undertaken by PSNH to support its response to Q-TC-021 prior to the “errors” filing of April 26, 2011.
- B. Please provide copies of any material identified in part A of this question.

PSNH responded as follows:

- A. The response referred to indicates that PSNH believes that the analysis prepared by Levitan is accurate in assessing value to be derived on behalf of customers. PSNH does not have any other or different analyses, studies, reviews or other analytical effort to support the response that PSNH provided in TC-01, Q-TC-021.
- B. PSNH has no material that is responsive to this request.

In summary it appears to TransCanada that PSNH failed to disclose the CRA study and its direct relevance to the Levitan work as a cross-check of its conclusions relative to Newington Station in January. Again, in June in the wake of the April “errors” filing by Levitan, PSNH still failed to disclose the CRA study and its relevance, and this allowed PSNH to conclude that the work of Levitan “properly represents the expected value of Newington to customers”. In two instances a very simple cross-check analysis that has already been performed and can be easily provided appears, based on PSNH’s response, to not exist, despite its posting on the Northern Pass website and its likely direct relevance to the Levitan analysis. PSNH’s repeated claims to be ignorant of and/or disavow the “relevance” of the CRA study makes its conclusions relative to the value of Newington Station to its customers deeply suspect and potentially flawed. This seems

especially true given PSNH's instruction to Levitan that it "not include" Northern Pass in its analysis, as detailed in section 10 below.

10. PSNH's second reason for denying TransCanada's request, that the study post-dates the filing of the plan, is inapposite. The subject of the study is clearly a central part of the plan and of this docket, thus the date of the CRA study as compared to the date that the plan was filed is irrelevant. Taken to its logical conclusion, PSNH's second argument would mean that at no point in this docket can the Commission or the parties refer to any information or actions by PSNH that post-date the filing of the plan. What makes PSNH's second reason for objecting to the data request even less compelling is the fact that on April 26, 2011, long after the CRA study was submitted to FERC, PSNH submitted 42 new corrected pages to the IRP in this docket, which PSNH noted in the cover letter encompassed "several errors in PSNH's September 2010 initial filing". Sustaining PSNH's objection would lead to an absurd result that would unnecessarily hamstring the Commission and the parties' review of the Newington study and completion of the review required in this docket. It should also be noted that PSNH specifically referred to the Northern Pass project in the transmission section of the September 2010 plan (p.112 "Northeast Utilities...has studied various options and has proposed a high-voltage direct current transmission tie line with Hydro Quebec.") The fact that PSNH told its consultant: "Do not include the proposed Hydro Quebec HVDC transmission line in the analysis as it is currently only a proposal" (copy attached as Exhibit C - from the response to OCA 2-24) is difficult to reconcile with other aspects of the Levitan study. Further, this is likely to be an important issue in this docket, especially if another study commissioned by NU (the CRA Study) shows that the Northern Pass

project will make Newington Station, and potentially other PSNH generating facilities, even less economic.

11. The Commission and the parties should have access to current and timely information and data that is relevant to the analysis being done at this point in time in this docket. PSNH asserts in every forum the value of its generating assets to its customers and their continuing usefulness with respect to energy security and other claimed attributes. These assertions need to be examined and tested. PSNH prefers that its generation remain regulated, thus transferring all of the risk of its decisions to their remaining customers rather than to investors. Taking an unnecessarily restrictive or limited view of discovery on this particular request in this particular docket will serve no purpose other than to continue to protect PSNH from the type of scrutiny that it must accept as a requirement in return for the benefits and protections it receives from rate of return regulation. The benefits of keeping such information transparent and open to the public in a planning docket clearly outweigh PSNH's self-serving and facially inadequate objection to providing the information by claiming its lack of relevance or timeliness. PSNH cannot continue to have it both ways: risk free decisions and frequent withholding of information that can help to evaluate the merit of those decisions.

12. The CRA Study at issue was submitted to the Federal Energy Regulatory Commission as part of a filing submitted by Northern Pass. It contains an analysis commissioned by PSNH's parent company, Northeast Utilities, a subsidiary of which has entered into a joint venture with NSTAR to develop the Northern Pass Transmission Line. A copy of the Study is attached to this Motion as Exhibit D. What

TransCanada is seeking here is output data from the model that has already been run; we are not asking the Commission to require PSNH to make any new runs. An overview of the GE-MAPS model that is used in the Study is provided in Section 3.2 of the Study on pages 19 and 20. On page 40, Appendix A.2.2, the Study refers to “Thermal Unit Characteristics” and says that the “GE MAPS models generation units in detail, in order to accurately simulate their operational patterns and thereby project realistic hourly prices.” It then goes on to list the characteristics that are modeled, which include, among other things, heat rates, operation and maintenance costs, forced and planned outage rates, and minimum up and down times. The information contained in these models that TransCanada is seeking is exactly the kind of information that PSNH’s consultant in this docket has reviewed and thus the kind of information that should be compared to information used in the Levitan study.

13. A further explanation of the information that can be obtained from the GE-MAPS Model is attached as Exhibit E to this Motion. This is a 2005 description of the Model that refers to the key outputs of the Model being “a set of Locational Marginal Prices” and “key technical and economic parameters such as hourly generation levels, costs, revenues, profit margins, spot and average prices and profitability indices. These characteristics are generated at the market-wide, firm *and generating unit levels...*” [emphasis added]. Revenue and profit margin information at the generating unit level (Newington) is part of the review that the Levitan study has done for this docket and the information at issue in the data request will provide an extremely relevant double-check on the Levitan analysis. Further, the information can be used to determine the impact of the Northern Pass project on Newington’s economic operation, an analysis PSNH

specifically instructed Levitan not to perform. The information from this Model that TransCanada is seeking would thus greatly assist in the review of the continued operation unit study that was submitted in this docket and assist in evaluating the corrected Levitan numbers. It is directly relevant and fundamental to this docket and to the corrected Levitan numbers. It cannot with a straight face be characterized as “apples and oranges” as was stated by PSNH representatives during the June 22, 2011 technical session during a discussion of the CRA study.

14. For the reasons cited above, the Commission should compel PSNH to respond to this data request so that this information can be made available to the Staff, the OCA and all of the parties to this docket as soon as possible. Because the proposed schedule requires testimony from Staff and intervenors to be submitted by July 27, 2011, TransCanada asks that this Motion be addressed with this deadline in mind.

15. Counsel to TransCanada has contacted counsel to PSNH in an attempt to resolve this discovery issue in good faith, as required by Puc 203.07(i)(4), to no avail. The Conservation Law Foundation, the New England Power Generators Association, Inc., Granite Ridge Energy, LLC, Freedom Logistics, LLC d/b/a Freedom Energy Logistics and Halifax-American Energy Company, LLC support this Motion. Staff and the Office of Consumer Advocate take no position on the Motion.

WHEREFORE, TransCanada respectfully requests that this honorable Commission:

- A. Compel PSNH to respond to TC 3-2; and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,

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Douglas L. Patch

June 28, 2011

Certificate of Service

I hereby certify that on this 28th day of June, 2011 a copy of the foregoing motion was sent by electronic mail to the Service List.



Douglas L. Patch

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