

**THE STATE OF NEW HAMPSHIRE**  
**before the**  
**PUBLIC UTILITIES COMMISSION**

Public Service Company of New Hampshire

**Investigation of Scrubber Costs and Cost Recovery**

Docket No. DE 11-250

**Objection**  
**of**  
**Public Service Company of New Hampshire**  
**to**  
**TransCanada’s Motion to Compel**  
**Public Service Company of New Hampshire**  
**to Respond to Data Requests Regarding Rebuttal Testimony**

Pursuant to N.H. Code Admin. Rules Puc § 203.07(e), Public Service Company of New Hampshire (“PSNH” or the “Company”) hereby objects to TransCanada’s “Motion to Compel Public Service Company of New Hampshire to Respond to Data Requests Regarding Rebuttal Testimony” (the “First Rebuttal Motion”)<sup>1</sup> dated August 25, 2014.

In support of this Objection, PSNH states as follows:

1. Pursuant to the procedural schedule for this proceeding, on July 11, 2014, PSNH filed its rebuttal testimony. As noted by TransCanada, PSNH’s rebuttal testimony including attachments was over 700 pages long (709 pages to be precise). That testimony responded to the direct prefiled testimony of TransCanada, the Conservation Law Foundation (“CLF”), the Sierra Club (“SC”), the Office of Consumer Advocate (“OCA”), and Commission Staff (“Staff”) – testimony and attachments that totaled over two thousand pages (2,472 pages to be precise).

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<sup>1</sup> A second motion was filed simultaneously by TransCanada, which is referred to herein as the “Second Rebuttal Motion.”

2. On July 25, 2014, data requests on rebuttal testimony were due and PSNH received over 300 separately numbered requests – none from Staff, 19 from CLF/SC, 22 from OCA, and 261 from TransCanada. PSNH has provided responses to all 22 of OCA’s questions; to 14 of the CLF/SC questions; and to date, to 181 of TransCanada’s 261 questions.

3. On August 12, the Commission scheduled a Technical Session for August 18, the purpose of which was to provide a venue for discussion of disputed discovery questions. That same day, counsel for PSNH wrote to counsel for TransCanada seeking input on the scope of questions to be discussed during the Technical Session. *See* Attachment 1. As noted in the First Rebuttal Motion at ¶2, TransCanada responded to PSNH’s inquiry on August 15.

4. During that Technical Session, CLF reported that it and PSNH had discussed and resolved its questions, and CLF indicated that it did not anticipate the need to file a Motion to Compel.<sup>2</sup> As a result of the Technical Session, and with the assistance of the Commission’s General Counsel, Attorney Ross, a number of issues surrounding TransCanada’s discovery questions to PSNH were resolved.

5. Out of the 261 questions TransCanada propounded on PSNH, in its First Rebuttal Motion TransCanada only addresses twenty-eight: TC 06-38, -39, -40, -93, -94, -96, -125, -137, -149, -152, -153, -157, -158, -160, -171, -172, -174, -183, -208, -209, and -210 (which TransCanada categorizes as “market information” questions); and TC 06-37, -47, -50, -62, -134, -192, and -195 (which TransCanada categorizes as “non-market” questions).<sup>3</sup> Subsequent to the discovery Technical Session PSNH informed TransCanada that it would provide responses to six of these twenty-eight questions: TC 06-62, -134, -137, -149, -152, and -174, as well as supplemental

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<sup>2</sup> Neither CLF nor SC filed a Motion to Compel. OCA filed a Motion to Compel, but subsequently stated that it was withdrawing that motion.

<sup>3</sup> TransCanada addresses an additional four questions in its Second Rebuttal Motion.

responses to six others: TC 06-37, -93, -94, -157, -158, and -195. *See* footnote 2 to TransCanada’s First Rebuttal Motion.<sup>4</sup> PSNH has also subsequently provided or supplemented its responses to Q-TC-06-40, -192, and -210.<sup>5</sup> As these fifteen questions have been responded to or supplemented, PSNH will not address them in this objection.<sup>6</sup> This leaves only eleven questions<sup>7</sup> identified in TransCanada’s First Rebuttal Motion that remain unanswered by PSNH and subject to consideration by the Commission. (PSNH has prepared a chart included as Attachment 2 in order to keep track of the status of the various questions contained in the First Rebuttal Motion.)

6. In its objections, PSNH provided detailed and specific bases for each question it objected to. The majority of PSNH’s objections involve four issues: i. the question is directed to entities that are not parties to this proceeding; ii. the question is unrelated to the testimony sponsored by the particular witness; iii. the question seeks information identical to that which TransCanada was twice ordered by the Commission to provide, but which in contempt of those Orders TransCanada has refused to provide; or, iv. the question involves Legislative matters deemed irrelevant by the Commission. TransCanada has bifurcated its Motion to Compel into two motions and only addresses questions involving the first three of these general issues in its “Motion to Compel Public Service Company of New Hampshire to Respond to Data Requests Regarding Rebuttal Testimony,” the “*First* Rebuttal Motion” addressed herein. The final issue is addressed in TransCanada’s separate “Motion Regarding Scope of Proceedings Related to Public

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<sup>4</sup> As noted on Attachment 2, those responses were provided to the parties on August 29.

<sup>5</sup> As noted on Attachment 2, those responses were provided to the parties on September 2 and 3.

<sup>6</sup> If TransCanada deems the answers to be unsatisfactory, it may avail itself of the process in Rule Puc 203.09(i), and PSNH will respond accordingly.

<sup>7</sup> Although Attachment 2 indicates that there are thirteen questions that remain subject to the First Rebuttal Motion, as noted by the asterisk on that attachment two of those questions (TC 06-208 and -209) seek information identical to two others (TC 06-038 and -039).

Service Company of New Hampshire's Options for Action Regarding RSA 125-O and Motion to Compel” (the “*Second* Rebuttal Motion”) filed simultaneously with the First Rebuttal Motion, which PSNH responds to in a separate pleading.

7. In Order No. 25,646 the Commission set forth five discovery standards. Those standards supplemented other earlier rulings regarding information relevant to this proceeding. As the Commission noted in that Order, those standards were established for this proceeding because “we must draw some boundaries around discovery in this case.” Order No. 25,646 at 5.<sup>8</sup>

Despite these “standards” creating “boundaries around discovery,” in the First Rebuttal Motion TransCanada cites to “general principles”<sup>9</sup> and the discovery arguments PSNH’s made before those more restrictive standards were ordered into effect; discovery practices that would normally apply absent the Commission’s subsequent rulings in this proceeding. As PSNH’s opportunity to seek information during discovery was limited by these standards and rulings, other intervenors must be similarly limited, and must not be allowed to argue that the broader discovery rules typically in force should apply to them now. PSNH’s objections specifically cited the relevant discovery standards and rulings established for this proceeding.

8. In Order No. 25,646 at 35-36 the Commission stated, “Discovery is generally limited to ‘any party.’ Puc 203.09(b),” unless “a particularized showing” of “substantial need for specific information from a non-party . . . is necessary to this docket and not otherwise available... .” PSNH objected to six of TransCanada’s questions addressed herein (TC 06-38, -39, -40, -208,

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<sup>8</sup> See Rule PUC 203.09(b) which allows the Commission to deviate from normal discovery rules upon issuance of “an applicable procedural order.”

<sup>9</sup> First Rebuttal Motion at ¶17.

-209, and -210) based in part on this ground.<sup>10</sup> Those questions seek information available to or in the possession of PSNH, its affiliates, or parent company. Prior to the submission of its First Rebuttal Motion, TransCanada failed to make the requisite “particularized showing” of “substantial need for specific information from a non-party” in order to compel responses from PSNH’s affiliates or its parent company. In its First Rebuttal Motion, TransCanada acknowledges and refers to this requirement three times (in paragraphs 7, 8, 15, and 25-28). Apparently, TransCanada now agrees with PSNH and the Commission’s Order No. 25,663 that there is a “substantial need for specific information” regarding price forecasts for gas and coal (Q-TC- 06-038 and -208), the forward market for natural gas (Q-TC-06-039 and -209), and the impact of shale gas fracking on future gas supply and prices (Q-TC-06-125, -153, -160, -171, -172) such that non-party affiliates or the parent company of PSNH should be required to provide that information. This is a sea-change from the position that TransCanada took in its April 25, 2014, “Objection to Public Service Company of New Hampshire Motion to Compel TransCanada to Respond to Data Requests,” where at page 2, discussing the exact same categories of information, TransCanada took the position that the information failed to meet the particularized showing of substantial need test. In light of TransCanada’s epiphany, PSNH will withdraw its affiliate/non-party objections to questions TC 06-038, -039, -040, -208, -209, and -210.

9. Per Standard #2, “Standard for Requests of a Party Regarding its Witness’s Testimony,” the Commission decided:

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<sup>10</sup> As noted above, questions TC 06-38 and -208; TC 06-39 and -209; and, TC 06-40 and -210 seek identical information. PSNH has responded to questions TC 06-040 and -210. Therefore, there are only two distinct questions that are now affected by the “non-party” issue.

PSNH also directed questions at parties that are *un*related 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.

Order No. 25,646 at 5 (emphasis in original). PSNH objected to six of TransCanada's questions addressed herein (TC 06-38, -39, -40, -96, -137, -152, and -174) based in part on Standard #2, i.e., questions TransCanada asked of one witness regarding the subject matter testified to by a different witness. As noted earlier, PSNH has responded to questions -40, -137, -152, -174, and -210 (*see* paragraph 5, above). As questions 38 and 39 are substantially identical to questions 208 and 209, and PSNH did not object on the basis of Standard #2 to questions 208 and 209, PSNH will withdraw its Standard #2 objections to questions 38 and 39. The only remaining question subject to a Standard #2 objection, TC 06-96, is discussed below.

10. In Order Nos. 25,663 and 25,671 the Commission ordered TransCanada to provide responses to questions relating to price forecasts for gas and coal, futures prices of gas, and information relating to shale gas fracking. TransCanada admitted that it had "voluminous" amounts of responsive information. TransCanada's "Motion for Reconsideration and/or Clarification of Order No. 25,663" at ¶6. As the Commission is well aware, TransCanada refused to provide that responsive data. Leaving no doubt of its refusal to comply with the Commission's orders, TransCanada bluntly informed the Commission, "TransCanada wants to make it clear to the Commission, however, that it will not provide forecasts that were produced by or that are in the possession of affiliates that are not parties to this docket for the reasons explained above." *Id.* at ¶7.

11. PSNH objected to 12 of the 28 questions identified in the First Rebuttal Motion<sup>11</sup> on the ground that, “[i]n an act of contempt, TransCanada has refused to obey Commission Orders to provide information in its possession regarding [price forecasts] [the impact of gas fracking]; hence, as a matter of fairness, equity, and due process TransCanada is not entitled to this information from PSNH.” *See* Exhibit A to First Rebuttal Motion.

12. Now, in a twist of irony, TransCanada asks the Commission to use its authority to order responses from PSNH – the very same authority that TransCanada defied and refused to obey. And, TransCanada asks this Commission to order PSNH to produce the very same category of information that TransCanada itself has refused to provide as part of the discovery process for this proceeding.

13. What TransCanada is asking for is patently unfair. In this very proceeding, the Commission has stated that, “[o]ur decisions on whether to permit a particular type of discovery are guided by a desire to seek the truth upon which our decisions must rest, *a sense of procedural fairness*, procedural efficiency, and prior practice.” Order No. 25,566 at 3 (emphasis added). “[T]he right of an opposing party...to obtain evidence through discovery...is an important procedural right.” N.H.R.Prof.Conduct 3.4 ABA model code comments at ¶2.<sup>12</sup> The Commission has previously equated fairness with due process: “A primary consideration of due process is fundamental fairness.” *Re Central Water Co.*, 85 NH PUC 25, 27 (2000) (citing *City*

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<sup>11</sup> Questions TC 06-38, -39, -40, -125, -149, -153, -160, -171, -172, -183, -208, -209, and -210.

<sup>12</sup> The Commission’s Chapter Puc 200 Procedural Rules acknowledge it is a procedural right to obtain evidence through discovery: Rule Puc 203.09(a) “(a) The petitioner, the staff of the commission, the office of consumer advocate and any person granted intervenor status *shall have the right to conduct discovery in an adjudicative proceeding* pursuant to this rule.” (emphasis added); Rule Puc 203.09(b) “Unless inconsistent with an applicable procedural order, any person covered by this rule *shall have the right to serve upon any party, data requests*, which may consist of a written interrogatory or request for production of documents.” (emphasis added).

of *Claremont v. Truell*, 126 N.H. 30, 36 (1985)).<sup>13</sup> The New Hampshire Supreme Court has also held that due process and fundamental fairness go hand-in-hand: “Due process under our constitutional republic has, as a primary consideration, the notion that no matter how rich or how poor, all of our citizens are entitled to fundamental fairness when government agencies seek to regulate them.” *Appeal of Pub. Serv. Co. of New Hampshire*, 122 N.H. 1062, 1072 (1982) (hereinafter “*Appeal of PSNH*”).

14. In *Appeal of PSNH*, the Supreme Court also held:

Due process is a flexible standard in the administrative law context. We expect and will require meticulous compliance with its mandates, however, in the case of the PUC because as long ago as 1929 this court recognized that the PUC was created by the legislature as a “state tribunal, imposing upon it important judicial duties.” *Parker-Young Co. v. State*, 83 N.H. 551, 556, 145 A. 786, 789 (1929). When it is not acting in a rule-making capacity but in an adjudicative one, see 3 K. Davis, *supra* § 14:5, at 24-28, the procedural posture of the PUC is different. “If private rights are affected by the board's decision the decision is a judicial one.”

*Id.* at 1073.

15. Principles of fundamental fairness and equity demand that when one party to a “judicial” proceeding obstructs an opponent’s rights by disobeying the tribunal’s orders to produce relevant information - information for which there is a particular, substantial need - then the offending party should not be allowed to use the tribunal’s power to demand production of the very same information.<sup>14</sup> Fundamental fairness dictates that if one party refuses to provide “voluminous” amounts of information responsive to a particular topic, that same party should not be allowed to benefit by the use of another party’s responsive information for the same topic. These issues of

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<sup>13</sup> See also *Appeal of Plantier*, 126 N.H. 500, 509 (1985) (“Due process is the New Hampshire Constitution's version of the principles of equity... .”)

<sup>14</sup> *Noddin v. Noddin*, 123 N.H. 73, 76 (1983) (“Equitable relief will be denied if one comes to the court with unclean hands.”)

fundamental fairness are heightened where the refusing party (i.e., TransCanada) has no rights, duties, privileges, immunities or other substantial interests affected by the proceeding<sup>15</sup> and the other party (i.e. PSNH) has substantial private property rights (over \$½ billion) at stake.<sup>16</sup> *Id.*<sup>17</sup>

16. As a result of TransCanada’s refusal to provide the “voluminous” amounts of information it possesses responsive to the topics of gas and coal price forecasts, gas futures pricing, and the impact of shale gas fracking, fundamental fairness and due process require the Commission to reject TransCanada’s attempt to obtain that very same information from PSNH.

17. Now that TransCanada seeks to use the Commission’s powers to compel PSNH to provide the very same information that TransCanada refused to provide, the Commission should revisit the sanctions it imposed on TransCanada for its disobedience. TransCanada’s actions amount to “new evidence not previously available.” *See O’Loughlin v. N.H. Personnel Comm’n*, 117 N.H. 999, 1004 (1977); *Hollis Telephone, Inc., Kearsarge Telephone Co., Merrimack County Telephone Co., and Wilton Telephone Co.*, Order No. 25,088 at 14 (Apr. 2, 2010). Striking 12 sentences or phrases out of 30 pages of testimony is not only insufficient to provide fundamental fairness to PSNH; if offenders are entitled to use the very power that they abused, the Commission’s sanctions will not act as a deterrent to others.

18. In the event that the Commission deems it fair and equitable to issue an order compelling PSNH to respond to questions TC 06-38, -39, -125, -149, -153, -160, -171, -172, -183, -208, and -209 despite TransCanada’s contempt and lack of standing, the Commission should prohibit

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<sup>15</sup> RSA 541-A:32,I,(b). *See* Secretarial Letter dated December 23, 2011.

<sup>16</sup> *See* Prefiled Testimony of Steven E. Mullen at 22 (the total capital costs to be considered in this proceeding is \$415,511,889); Prefiled Testimony of Eric H. Chung at 4 (deferred scrubber costs estimated to be \$104.7 million as of 12/31/14).

<sup>17</sup> *See also Duncan v. State*, \_\_\_ N.H. \_\_\_, *slip op.* at 10 (August 28, 2014) (“standing under the New Hampshire Constitution requires parties to have personal legal or equitable rights that are adverse to one another... .”)

TransCanada from using the information that PSNH would be required to supply in response to those questions in any way or manner in this proceeding, unless and until TransCanada obeys the Commission's orders and provides the "voluminous" responsive information in its possession .

19. Similarly, TransCanada's "sea-change" and belated acknowledgment of the importance of information regarding fuel price forecasts and natural gas futures markets as well as the particularized and substantial need for the production of such information in this proceeding exacerbates its own refusal to provide such information from its affiliates. This behavior must be taken into account when the Commission determines whether its prior sanction is sufficient, as well as the extent of the "adverse inference" that will be applied as the result of TransCanada's withholding of discovery.<sup>18</sup> See Order Nos. 25,687 and 25,697.

20. There are three questions that require further discussion beyond that provided above – questions TC 06-96, -47, and -50.

21. Question TC 06-96 and PSNH's objection thereto read:

**Q-TC-06-096:**

*Reference pages 18 through 22 of your testimony. Provide the study and any presentation materials associated with CEA's assessment of various energy options for the Oberlin City Council in connection with the decision whether to participate in a pulverized coal plant in Ohio in 2008.*

PSNH objects to this request on the following bases:

i. Relevance.

ii. This request is unrelated to the testimony of the witness it was directed to. This question was addressed to Mr. Reed. Mr. Reed's testimony relates to the applicable prudence standard and the availability of practical options to installation of the Scrubber by PSNH. In Order No. 25,646 the Commission set forth five discovery standards. Per Standard #2, "Standard for Requests of a Party Regarding its Witness's Testimony" (Standard #2), the Commission decided,

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<sup>18</sup> This "sea-change" is also "new evidence not previously available."

“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.”

22. In its First Rebuttal Motion, TransCanada claims that the requested report is relevant to this proceeding because the report provided an assessment of various energy options to the Oberlin, Ohio city council, and can help determine what industry information was available in 2008, as well as whether the analyses PSNH undertook were reasonable. First Rebuttal Motion at ¶¶37-38. Exhibit C to the First Rebuttal Motion reveals that the requested report discussed the construction of a new coal-fired generating plant by American Municipal Power in Meigs County, Ohio. Construction of a new coal plant, in Ohio, which is in the PJM power pool, and which is neither subject to the statutory requirements of the Scrubber Law, nor mandated by any other law, has no relevance to the instant case; a case that involves construction of a pollution control device, at an existing coal plant, in New Hampshire, within ISO-NE, to comply with a specific state law. Using TransCanada’s reasoning, information regarding any generating plant at any location would be relevant to this proceeding. PSNH urges the Commission to reject TransCanada’s motion to compel regarding this question as the probative value of the information sought is too remote to have significance to this proceeding.

23. In addition, as noted in PSNH’s objection, discovery Standard #2 is applicable, and per that Standard, this motion to compel a response to question Q-TC 06-96 should be rejected.

24. Question TC 06-47 and PSNH’s objection thereto read:

**Q-TC-06-047:**

*With regard to your testimony at page 22 and the savings to customers this past winter, please explain how such savings were calculated. In so doing, please enunciate all costs included in valuing the power produced by Merrimack Station (e.g., O&M costs, scrubber costs, commodity costs, rate of return, etc...). Please provide all costs on a monthly basis for each month since the scrubber began*

*operating. Please also provide all data used to determine the ISO-NE “daily” price enunciated in Attachment WHS-R-03. Please provide all documentation, including relevant spreadsheets or other calculations you used to calculate the “savings” for ratepayers on a monthly basis for each month since the scrubber began operating.*

PSNH objects to this request on the following bases:

i. Relevance.

ii. The information requested is reviewed by the Commission in the Energy Service ratesetting docket and the annual ES/SCRC reconciliation docket, and is not within the scope of this proceeding.

25. Question TC 06-50 and PSNH’s objection thereto read:

**Q-TC-06-050:**

*Relative to your testimony on page 22, lines 3 – 6, provide a monthly tabulation for Merrimack Station from the date of scrubber operation through June, 2014 of:*

- a. MWHs generated*
- b. market revenues from all NEPOOL markets*
- c. fuel costs billed to consumers*
- d. all non-fuel costs billed to consumers*
- e. costs incurred but not yet billed to consumers*

PSNH objects to this request on the following bases:

i. Relevance.

ii. The information requested is reviewed by the Commission in the Energy Service ratesetting docket and the annual ES/SCRC reconciliation docket, and is not within the scope of this proceeding.

26. Questions TC 06-47 and -50 involve the same issues.

27. In its First Rebuttal Motion, TransCanada claims it needs information from PSNH regarding how Mr. Smagula reached his conclusion regarding the alleged savings. Mr. Smagula’s testimony regarding the \$119 million in savings to PSNH's customers (when compared to purchasing an equivalent amount of energy at prevailing market prices) was provided in response to Mr. Kahal’s testimony that “the appropriate imprudence remedy may

depend upon decisions over the long-run treatment of Merrimack,”<sup>19</sup> as well as Mr. Kahal’s data request response to Q-PSNH-OCA-1-19 indicating that future proceeds from Merrimack Station were relevant to the quantification of any potential imprudence.<sup>20</sup> PSNH discusses this matter in more detail in paragraphs 65 through 68 of its “Response to OCA’s Five Motions to Strike Dated August 6, 2014” filed on August 12, 2014.

28. The precise quantification of the savings produced by Merrimack Station (and PSNH’s other generating assets) last winter, as compared to the market, is not at issue in this proceeding. The point made by Mr. Smagula was that, as Mr. Kahal notes, such savings would have to be considered on an on-going basis if an imprudence quantification was made, or, alternatively, all such past savings would have to be collected back from customers and repaid to PSNH.<sup>21</sup>

29. As noted in PSNH’s objection, the precise quantification requested by TransCanada is a matter dealt with within the energy service ratesetting docket and/or the annual ES/SCRC reconciliation docket. Indeed, the very exhibit to Mr. Smagula’s testimony that forms the basis of the \$119 million in savings (Attachment WHS-R-03) is a Technical Session data response from Docket No. DE 13-275, “Proposed Default Energy Service Rate for 2014.” The burden of producing nearly three years of monthly operational data, daily ISO-NE prices, and the like outweighs any peripheral relevance of the data. In *Re Pub. Serv. Co. of New Hampshire*, 69 NH PUC 649, 651 (1984) the Commission adopted the discovery standard that there is a relationship between the burdensomeness of responding and the relevance or materiality of the material

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<sup>19</sup> Prefiled Testimony of Matthew I. Kahal at 9.

<sup>20</sup> Mr. Kahal’s response to Q-PSNH-OCA-1-19 is attached hereto as Attachment 3.

<sup>21</sup> See footnote 11 to Mr. Smagula’s rebuttal testimony, which reads, “Since installation and operation of the scrubber was the only way these savings could be achieved, if customers receive these benefits of the scrubber project through the ratemaking process, customers have the obligation to pay for all prudent costs of installing the Scrubber... .”

sought. “Thus, if providing the information is burdensome and it is only peripherally relevant or material, an objection is proper.” *Id.*

30. For these reasons, the Commission should reject TransCanada’s motion to compel responses to Q-TC-06-47 and -50.

**WHEREFORE**, PSNH objects to TransCanada’s First Rebuttal Motion and for the reasons expressed herein, PSNH respectfully requests:

- A. That the Commission deem the portions of the First Rebuttal Motion pertaining to questions TC 06-37, -40, -62, -93, -94, -134, -137, -149, -152, -157, -158, -174, -192, -195, and -210 moot, as PSNH provided additional or supplemental responses to those questions subsequent to the filing of the motion;
- B. That the Commission deny TransCanada’s motion to compel responses to the remaining questions identified in its First Rebuttal Motion;
- C. That if the Commission deems it fair, equitable, and in accordance with standards of due process to order PSNH to respond to any or all of questions TC 06-38, -39, -125, -149, -153, -160, -171, -172, -183, -208, and -209 despite TransCanada’s contempt and lack of standing, then the Commission should prohibit TransCanada from using the information that PSNH would be required to supply in response to those questions in any way or manner in this proceeding, unless and until TransCanada ceases to obstruct PSNH’s access to evidence, obeys the Commission’s orders to compel and provides the voluminous responsive information in its possession which it has refused to do; and,
- D. That the Commission take into account TransCanada’s new-found appreciation of the particularized and substantial need in this proceeding for information related to fuel

price forecasts, gas forward market pricing, and the impact of shale gas fracking when the Commission applies the “adverse inference” to TransCanada’s testimony discussed in Order Nos. 25,687 and 25,697.

Respectfully submitted this 3rd day of September, 2014.

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 3, 2014, I served an electronic copy of this filing with each person identified on the Commission's service list for this docket pursuant to Rule Puc 203.02(a).



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**Technical Session on Monday**

From: **Glahn, Bill**  
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Cc: Robert A. Bersak, "Needleman, Barry"

08/12/2014 04:01 PM

Doug,

In advance of the scheduled Technical Session on August 18<sup>th</sup> to address discovery issues, it would be helpful to have a sense of the questions TransCanada considers most important or relevant. You will recall that after TransCanada's Objections to PSNH's Data Requests, PSNH narrowed the requests for which it was seeking answers in advance of a meeting in your office. A copy of that letter is attached. In order to narrow the topics for discussion on Monday, it would be helpful if you would also narrow the requests that will be in issue. Please let me know whether your client is willing to do so and if possible, provide us with such a list before Monday.

Bill

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2014-04-10 LT Attorney Patch re\_ April 14th meeting.PDF



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April 10, 2014

**Via E-mail**

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Concord, NH 03302-3550

Dear Doug:

As directed by the PUC's April 8 discovery Order, PSNH and TransCanada have agreed to meet face-to-face on Monday, April 14 to review the outstanding data requests asked by PSNH of TransCanada. Such a meeting was not practical prior to the Commission's Order due to the highly accelerated procedural schedule the PUC had established (which reduced the normal 3 week period for the filing of motions to compel to just 4 business days).

We have carefully considered the Commission's direction in its April 8 Order, and have re-visited and reviewed our outstanding discovery questions. As part of that process, we have similarly re-visited and reviewed Mr. Hachey's testimony to determine subject areas that are within the discovery standards set forth in the April 8 Order.

You have asked that we provide you with information concerning the questions we intend to discuss during Monday's meeting. While we believe that all of our questions were appropriate, and continue to believe that TransCanada's objections were facially inadequate, we have made a good faith effort to dramatically reduce the number of requests.

We have focused on what we consider to be highly relevant inquiries given TransCanada's basis for participation in this case as a discretionary intervenor. Mr. Hachey testified (at page 3) that he is addressing the following issues:

- Scrubber law and project estimates
- PSNH's knowledge regarding cost increases
- The importance of the relationship between projected natural gas and coal prices
- PSNH's fuel forecasts and assumptions

- “Cost to go” analysis
- Factors PSNH should have taken into account
- Options open to PSNH
- Conclusion

Mr. Hachey’s testimony revolves around what the forecast prices of energy (including gas, coal, oil and electricity) and emissions allowances were when the scrubber project began and in early 2009 when the legislature reconsidered the mandate it had enacted in the scrubber law. That data is central to Mr. Hachey’s testimony and opinions in this case. Given TransCanada’s status as one of North America’s largest energy companies – one involved in the production and transportation of natural gas as well as its involvement in the generation of electricity from gas, coal, nuclear, hydro, wind and solar sources – it undoubtedly has a significant amount of information relevant to Mr. Hachey’s testimony and the central issues in this proceeding.

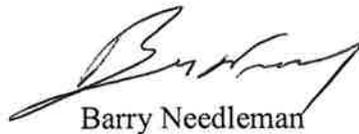
Consistent with the Commission’s April 8 Order, and with what we believe to be directly relevant given Mr. Hachey’s testimony and the issues TransCanada has raised in this proceeding, during Monday’s meeting we will ask that TransCanada answer 35 outstanding questions - - a small fraction of the questions TransCanada had previously objected to. In particular, we will be seeking responses to the following questions:

<b>Question</b>	<b>General Topic</b>
3	Organization chart (only a partial chart was provided)
23	Scrubber costs
30	Peak construction prices
34	Natural gas price forecasts
37	Natural gas price estimates
52	New England forward natural gas prices
53	Mr. Hachey’s opinion
57	Natural gas price forecasts
61	TransCanada’s understanding of 2008 natural gas pricing
63	2008 natural gas price forecasts
66	Natural gas production forecasts
67	Natural gas pricing forecasts
68	Natural gas supply/demand forecast
69	New Hampshire natural gas price forecast
71	Supply-related natural gas information
74	Documentation circa 2006 indicating that production of unconventional natural gas was exceeding production from conventional natural gas sources
75	Documentation circa 2007 regarding the potential of the unconventional gas supply
97	Impacts of shale gas on pricing
105	Impact of proceeding on TransCanada’s competitive position
113	Appropriate ROE for economic analyses

114	New England emissions price forecasts
126	Future gas price outlook
128	Data regarding Mr. Hachey's exhibit
134	Clarification of last page of Mr. Hachey's Attachment 26
135	Economic analyses for TransCanada NH/VT hydro projects
150	Economic analyses regarding RSA 125-O:17, Variance
151	Fuel price forecasts relating to the price of coal, oil and natural gas
152	Documentation provided to state officials re: scrubber law
153	Individuals employed by TransCanada regarding scrubber law
154	Documentation provided to state officials re: Senate Bill 152 or House Bill 496 in 2009
155	Individuals employed by TransCanada regarding Senate Bill 152 or House Bill 496 in 2009
159	Cost estimates for coal of combined cycle gas plants 2008-2009
161	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
162	Identify anyone who testified before legislature re: scrubber law
163	Identify anyone who testified before legislature re: Senate Bill 152 or House Bill 496 in 2009

We look forward to meeting with you.

Sincerely,



Barry Needleman

BN:slb

**ATTACHMENT 2 – STATUS OF QUESTIONS IDENTIFIED BY TRANSCANADA IN ITS FIRST REBUTTAL MOTION**

<b>QUESTION TC 06-</b>	<b>ORIGINAL STATUS</b>	<b>UPDATED STATUS</b>	<b>BASIS FOR OBJECTION</b>
38	Objected to by PSNH	Objected to by PSNH	Contempt/Due Process/Fundamental Fairness
39	Objected to by PSNH	Objected to by PSNH	Contempt/Due Process/Fundamental Fairness
40	Objected to by PSNH	Supplemental Response made 9/2/14	
93	Answered on 8/8/14	Supplemental Response made 8/29/14	
94	Answered on 8/8/14	Supplemental Response made 8/29/14	
96	Objected to by PSNH	Objected to by PSNH	Relevance; Unrelated to the witness's testimony
125	Objected to by PSNH	Objected to by PSNH	Contempt/Due Process/Fundamental Fairness
137	Objected to by PSNH	Supplemental Response made 8/29/14	
149	Objected to by PSNH	Supplemental Response made 8/29/14	
152	Objected to by PSNH	Supplemental Response made 8/29/14	
153	Objected to by PSNH	Objected to by PSNH	Contempt/Due Process/Fundamental Fairness
157	Answered on 8/8/14	Supplemental Response made 8/29/14	
158	Answered on 8/8/14	Supplemental Response made 8/29/14	
160	Objected to by PSNH	Objected to by PSNH	Contempt/Due Process/Fundamental Fairness
171	Objected to by PSNH	Objected to by PSNH	Contempt/Due Process/Fundamental Fairness
172	Objected to by PSNH	Objected to by PSNH	Contempt/Due Process/Fundamental Fairness
174	Objected to by PSNH	Supplemental Response made 8/29/14	
183	Objected to by PSNH	Objected to by PSNH	Contempt/Due Process/Fundamental Fairness
208*	Objected to by PSNH	Objected to by PSNH	Contempt/Due Process/Fundamental Fairness
209*	Objected to by PSNH	Objected to by PSNH	Contempt/Due Process/Fundamental Fairness
210*	Objected to by PSNH	Supplemental Response made 9/2/14	
37	Answered on 8/8/14	Supplemental Response made 8/29/14	
47	Objected to by PSNH	Objected to by PSNH	Relevance -the detailed information sought is reviewed in the periodic and reconciliation dockets. Also, the information sought is part of the Motion to Strike that is pending.
50	Objected to by PSNH	Objected to by PSNH	Relevance -the detailed information sought is reviewed in the periodic and reconciliation dockets. Also, the information sought is part of the Motion to Strike that is pending.
62	Objected to by PSNH	Supplemental Response made 8/29/14	
134	Objected to by PSNH	Supplemental Response made 8/29/14	
192	Objected to by PSNH	Supplemental Response made 9/3/14	
195	Objected to by PSNH	Supplemental Response made 8/29/14	

\*Questions TC 06-208, -209, and -210 seek the same information as Q-TC 06-38, -39, and -40, respectively.

**Attachment 3**

**Mr. Kahal's response to Q-PSNH-OCA-1-19**

**DE 11-250  
Public Service Company of New Hampshire  
Investigation of Scrubber Costs & Cost Recovery  
OCA's Responses to PSNH's Data Requests – Set #1**

**Date Received: January 16, 2014  
Request No.: PSNH 1-19**

**Date of Response: February 7, 2014  
Witness: Matthew Kahal**

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**Request:** Page 9, line 1 – You testify “the appropriate imprudence remedy may depend upon decisions over the long-run treatment of Merrimack, e.g., potentially pursuing divestiture as suggested in a recent Staff report on default service.” Please describe in detail how a future divestiture of Merrimack Station would impact the prudent costs of complying with the requirements of the Scrubber Law

**Response:** The section of testimony quoted concerns the remedy for an imprudence finding. Divestiture sales proceeds (if a successful divestiture takes place) might provide a partial (or full) offset to the actual book cost of the Merrimack scrubber. The larger that offset, the smaller the cost of potential imprudence. If divestiture proceeds (hypothetically) covered the full cost of the scrubber (or the unavoidable costs of the scrubber), then there would be no quantified imprudence. That is, PSNH would be fully compensated by a combination of divestiture proceeds and rate recovery of the unavoidable, sunk Merrimack costs deemed to be prudent.