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October 21, 2014

Ms. Debra A. Howland  
Executive Director & Secretary  
New Hampshire Public Utilities Commission  
21 South Fruit St., Suite 10  
Concord, NH 03301-2429

NHPUC OCT21'14 AM 9:13

Re: **DE 11-250, Public Service Company of New Hampshire Investigation of  
Scrubber Costs and Cost Recovery**

Dear Director Howland:

Public Service Co. of New Hampshire ("PSNH") wishes to respond to the October 17, 2014 letter from "TransCanada" seeking certain sanctions and remedies related to discovery issues arising in Docket No. DE 11-250. PSNH strongly feels that it has made diligent efforts to respond to the unprecedented number of information and document requests made in this proceeding by Staff, Audit Staff, the Commission's expert consultant, and the parties. TransCanada has failed to show any intentional or unreasonable actions by PSNH relating to its discovery obligations.

In this proceeding PSNH has responded in a timely manner to multiple series of data requests, totaling over 900 separate numbered individual questions (without counting subparts), from the various parties, Staff, Audit Staff and Jacobs Consultancy. PSNH also responded to questions posed during a number of technical sessions held since the initiation of this proceeding.

In addition to the individual responses to these questions, PSNH created and for years kept open a "data room" housing tens of thousands of pages of the Project's contracts, engineering drawings, invoices and the like to allow the Parties access to those materials. Similarly, PSNH provided the Parties with the opportunity to have access to all of the responses provided by the Company to Jacobs Consultancy that it asked as part of its multi-year, comprehensive review of the Project.

And, beyond that, the Parties also requested and were provided the opportunity to depose then-PSNH President Gary A. Long. The Parties spent an entire day conducting that deposition, and have marked the transcript and exhibits thereto as exhibits in the on-going hearing in this proceeding. As part of the mandated deposition, the Commission should note that by its Order 25,566 (Order Compelling Deposition), the Commission expressly prohibited PSNH and Staff from directly participating in that deposition – “only the Joint Movants [TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast, Inc. (collectively, TransCanada), the Office of Consumer Advocate (OCA), Sierra Club, and Conservation Law Foundation (CLF)], through their designated questioners, may question Mr. Long.” During that deposition, Mr. Long was asked and responded to over *six hundred* questions (not including the additional deposition data requests that were responded to following the deposition).

Subsequent to this extraordinary discovery process, TransCanada’s letter of October 17 identifies one area of discovery where it claims PSNH should be subject to sanctions due to the Company’s inability to locate what TransCanada deems to be critical information; that area being “production of natural gas forecasts from PSNH, Northeast Utilities, and affiliate companies.” TC 10/17 Letter, first sentence.

This present dispute arises from PSNH’s alleged failure to produce documents responsive just one area, seeking information about PSNH’s fuel price forecasts. In particular data request Q-TC-06-038 was made on July 25, 2014, was objected to by PSNH, was the subject of a Motion to Compel dated August 25, 2014, was revised during a technical session on September 8, 2014, and was included in the Commission’s Order No. 25,718 dated September 17, 2014 (two weeks prior to hearings), as a question to which PSNH must respond. Thus, contrary to the sanctions sought by TransCanada, the dispute does not involve PSNH’s actions in responding to the more than 900 requests, but only a request for documents of a specific type.

On the record during Friday’s hearing, PSNH described the efforts it had made to locate information responsive to data requests, and how and why the EVA (“Energy Ventures Analysis”) forecast documents escaped detection. As soon as the “missing link” was determined, those forecasts were retrieved and expeditiously provided to the parties as required by the Commission’s rules.

In its October 17 letter, TransCanada seeks production of additional information in several numbered document requests. Each is addressed below:

No. 1: PSNH has produced the EVA documents in its possession.

No.2: PSNH will continue to search for any forecasts referenced in the 2007 Plan that are not already contained within that Plan and produce them if any are found.

No. 3: PSNH is puzzled by this request for all forecasts it “may have failed to produce.” Put simply, if we are aware of a responsive document, it has been produced.

If we find any additional responsive information, per Rule Puc 203.09(k), it will be produced. The fact that PSNH was unable to locate the EVA documents does not suggest that it “failed to produce” available forecasts. PSNH’s efforts are described above. PSNH - and all parties and intervenors to this Docket - have an obligation to make a good faith effort to produce responsive information.

No. 4: TransCanada’s proposed remedy seeks relief it is not entitled to under the Commission’s rules. PSNH has no obligation to seek information that is not in its possession but rather, may be in the possession of unrelated third parties. TransCanada’s statement also implies that relevant documents were destroyed during the discovery process for this proceeding as opposed to at other times. Such an assumption would not be correct.

No. 5: See discussion above relating to the EVA documents. Nothing in this current dispute suggests that PSNH (any more than any other party or intervenor) be required to explain its efforts to respond to thousands of requests.

No. 6: See discussion above.

No. 7: This request is not relevant. The fact that PSNH or some affiliate may have contracted for such forecasts does not indicate that PSNH was dilatory in producing such documents.

No. 8: Again, this request is irrelevant. PSNH was unable to find documents that were retained. Knowing what the policy for retention is will not advance this Docket or this dispute.

No. 9: TransCanada again “puts the rabbit in the hat” by suggesting that relevant documents were destroyed during the pendency of this Docket or were destroyed intentionally. No such inference can be drawn and no such destruction has occurred. This requires a search for what doesn’t exist. Even if possible, this is neither necessary nor relevant to this proceeding.

PSNH is compelled to note that TransCanada’s October 17 request appears to be an effort to excuse its own conduct in this proceeding. As Commissioner Iacopino pointed out last week, there is no comparison in the situations.

In summary, PSNH regrets that the EVA documents were not located earlier, but in a proceeding of this magnitude where there were thousands of requests, involving an enterprise with over 8,000 employees, seeking information that goes back nearly a decade, this is an unfortunate reality. Even TransCanada’s own witness recognized the difficulty of locating information in a large, multi-subsidary enterprise, when he testified, *“TransCanada has 5,000 employees. Who do I ask?”* PSNH did indeed “ask.” This matter does not rise to the level where the imposition of sanctions should even be considered.

For the reasons set forth herein, PSNH respectfully requests that the Commission reject the measures requested by TransCanada in its letter of October 17.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Bersak", with a stylized flourish at the end.

Robert A. Bersak  
Chief Regulatory Counsel

cc: Service List

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**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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Docket #: 11-250-1      Printed: October 20, 2014

**FILING INSTRUCTIONS:**

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**
- DEBRA A HOWLAND  
EXECUTIVE DIRECTOR  
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21 S. FRUIT ST, SUITE 10  
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**