

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire

Docket DE 11-250

Objection
of
Public Service Company of New Hampshire
to
TransCanada's Motion to Compel

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 dated July 16, 2012. TransCanada has identified as questions in contention its data request numbers 1-1, 1-2, 1-3, 1-4, 1-5, 1-7, 1-8, 1-9, 1-10, 1-11, 1-13, 1-14, 1-15, 1-16, 2-2, 2-3, 2-4, 2-5, and 2-6.¹

This is not the first time TransCanada is asking this Commission to ignore the express and detailed public interest determinations made by the General Court in RSA 125-O:11. Having failed to convince this Commission and the N.H. Supreme Court that the Legislature did not mean what it said when it enacted the Mercury Emissions Reduction Law (RSA 125-O:11-18 of the Multiple Pollutant Reduction Program), they now return here and ask this Commission not just to change Orders that have been upheld by the Supreme Court, but also to go beyond the authority granted by the Legislature and impugn the express statutory mandate that "I. The owner

¹ The first digit refers to which set of data requests the question is in, of the 2 sets TransCanada has requested thus far.

shall install and have operational scrubber technology to control mercury emissions at Merrimack Units 1 and 2 no later than July 1, 2013.”

In support of this Objection, PSNH states as follows:

1. On December 30, 2011, TransCanada submitted Set 1 of its data requests to PSNH containing 24 questions. Set 2 was issued on June 18, 2012, and consisted of 13 questions.

2. PSNH provided responses or objections to TransCanada’s questions.

3. In its Motion to Compel, TransCanada identified responses to fourteen of the numbered questions in the first set of data requests and five questions from the second set of data requests as being in dispute. TransCanada appended to its Motion copies of PSNH’s responses to those questions.²

4. TransCanada’s Motion primarily addresses questions regarding: (1) economic analyses and fuel forecasts “relied on” or “available to” “PSNH at the time of its initial decision to construct the flue gas scrubber at Merrimack Station”; (2) PSNH’s ability to seek a variance from the legislative mandate to install the scrubber; and, (3) PSNH’s lobbying costs and legislative efforts pertaining to the scrubber.

² Copies of PSNH’s responses to questions 1-6, 1-12, 2-1, 2-7, 2-8, 2-9, 2-10, 2-11, 2-12, and 2-13 were also appended to TransCanada’s Motion, but were not in any way addressed in that Motion.

5. Specifically, TransCanada's data requests TC 1-1 through 1-5 seek information relating to economic analyses and fuel forecasts either "relied on by PSNH in *its decision* to install a flue gas scrubber" or "available to PSNH *at the time of its initial decision* to construct the flue gas scrubber" ³ Question 1-1 requested copies of all of the aforementioned economic analyses upon which TransCanada alleges PSNH relied when the Company *decided* to install the scrubber. Question 1-2 requested copies of all of the aforementioned fuel forecasts available at the time PSNH *decided* to install the scrubber. Question 1-3 requests identification of the specific fuel costs upon which TransCanada alleges PSNH relied in the Company's *decision* to install the scrubber. Question 1-4 requests "all fuel price forecasts available to PSNH at the time of development of Gary A. Long's letter dated September 2, 2008 to Ms. Debra A. Howland, Re: Docket No. DE 08-103." Lastly, Question 1-5 seeks the identification of individuals who conducted the alleged economic analyses relating to PSNH's *decision* to install the scrubber.

6. In response to Questions 1-1, 1-2, 1-3⁴ and 1-5, PSNH raised (or referred back to) this objection:

PSNH objects to this question as it is based upon a faulty premise.
Notwithstanding this objection, PSNH responds as follows:

PSNH was required by law (RSA 125-O: 11-18) to install a wet flue gas desulfurization system at Merrimack Station as soon as possible. ("The owner shall install and have operational scrubber technology to control mercury emissions at Merrimack Units 1 and 2 no later than July 1, 2013." RSA 125-O: 13, I). The law is not discretionary.

In response to Question 1-4, PSNH raised this objection:

³ See, e.g., Questions 1-1 and 1-2 (emphases added).

⁴ PSNH's answers to Question 1-2 and 1-3 additionally provide that, "PSNH objects to this question because the information requested is irrelevant to the subject of this proceeding."

PSNH objects to this question because the information requested is irrelevant to the subject of this proceeding.

7. It is well established that “in a discovery dispute, the Commission applies by analogy the standard applicable to litigation in Superior Court, which requires a party seeking to compel discovery to show that the information being sought is relevant to the proceeding or is reasonably calculated to lead to the discovery of admissible evidence.”⁵ While “New Hampshire law favors discovery,” the Commission has stated that “discovery that seeks irrelevant or immaterial information is not something we should require a party to provide.”⁶ Furthermore, a party seeking discovery must demonstrate that the information is “relevant and ‘reasonably calculated to lead to the discovery of admissible evidence.’”⁷

8. The information that TransCanada seeks from PSNH does not meet that standard. What TransCanada fails to grasp is that the decision to install the “scrubber” was not one that PSNH made, or had the liberty to make; rather, the General Court made the decision that installation of the scrubber was in the public interest and mandated such installation by statute.⁸ As a result,

⁵ *Pub. Serv. Co. of N.H.*, Docket No. DE 10-261, Order No. 25,298 (2011) *slip op.* at 6.

⁶ *Re Pub. Serv. Co. of N.H.*, Docket No. DE 10-195, Order No. 25,174 (2010) *slip op.* at 17 (citing *City of Nashua*, 91 N.H. P.U.C. 452, 454 (2006)).

⁷ *N.H. Ball Bearings, Inc. v. Jackson*, 158 N.H. 421, 429-30 (2009) (quoting N.H. Super. Ct. Rule 35 (b)(1)).

⁸ *See Appeal of Stonyfield Farm*, 159 N.H. 227, 228 (2009) (“the legislation *specifically requires* PSNH to install ‘the best known commercially available technology . . . at Merrimack Station’ . . .”) (emphasis added). *See also In re Campaign for Ratepayers’ Rights*, 162 N.H. 245, 247 (2011) (“The installation of such a [scrubber] system was mandated by the legislature in 2006”). *See also* Secretarial Letter dated August 22, 2008 in Docket No. DE 08-103 (“RSA 125-O:11, enacted in 2006, requires PSNH to install new scrubber technology at Merrimack Station by July 1, 2013 that will achieve at least an 80 percent reduction in mercury emissions.”) *See also* “Findings of Fact and Director’s Decision,” In the Matter of the Issuance of a Temporary Permit To Public Service Company of New Hampshire, Merrimack Station Located in Bow, New Hampshire, NHDES, March 9, 2009 (“New Hampshire state law (RSA-125:O) requires PSNH to undertake this project. . . .” at 2; “RSA 125-O:13 requires PSNH to install a FGD system to control mercury emissions from Merrimack Station Units MK1 and MK2 no later than July 1, 2013.” at 3; “RSA 125-O requires the applicant to install ‘scrubber technology’ to control mercury emissions at Units MK1 and MK2 no later than July 13, 2013.” at 23).

PSNH did not rely upon economic analyses or fuel forecasts in any “decision” to install the scrubber-- the Company complied with a statutory requirement which it could not circumvent.⁹

9. Furthermore, earlier in this docket the Commission noted, “[t]he achievement of the *directive* to install the Scrubber . . . [was] made contingent upon the obtaining of ‘all necessary permits and approvals from federal, state, and local regulatory agencies and bodies’”-- it was not contingent upon an economic analysis or fuel forecast.¹⁰ The Commission itself has even observed that “[n]owhere in RSA 125-O does the Legislature suggest that an alternative to installing scrubber technology as a means of mercury compliance may be considered”¹¹ Consequently, since the General Court decided that installation of the scrubber was in the public interest, and PSNH had a legislative mandate to construct the scrubber, the Company made no “decision” as alleged in TransCanada’s questions. Thus, TransCanada is unable to demonstrate that the information is “reasonably calculated to lead to the discovery of admissible evidence,” and TransCanada’s Motion to Compel responses to questions TC 1-1 through 1-5 should be denied.¹²

⁹ See *Investigation of PSNH’s Installation of Scrubber Technology at Merrimack Station*, DE-08-103, Order No. 24,898 (Sept. 19, 2008) (“the Legislature has made the public interest determination and **required** . . . PSNH, to install and have operational scrubber technology to control mercury emissions no later than July 1, 2013.”) (emphasis in original).

¹⁰ Order No. 25,346 in the instant proceeding, *slip op.* at 21(emphasis added).

¹¹ *Id.*

¹² *Re Pub. Serv. Co. of N.H.*, Docket No. DE 10-195, Order No. 25,174 (2010) *slip op.* at 17 (internal citation omitted).

10. TransCanada next takes issue with PSNH's responses to questions regarding PSNH's ability to seek a variance, specifically, Question 1-14, 1-15, and 1-16.¹³ Question 1-14 reads, "[d]id PSNH give any consideration to whether to seek a variance from the mercury emission reduction requirements of RSA 125-O as authorized under RSA 125-O:17?" PSNH responded:

PSNH objects to this question, as it is based upon a faulty and erroneous interpretation of the law. Notwithstanding this objection, PSNH responds as follows:

There was no need for PSNH to seek any variance from NHDES under either RSA 125-O:17 sections I or II, because, I. The scrubber was successfully placed into service prior to the statutorily mandated date of July 1, 2013 (RSA 125-O:13, I); and, II. an alternative requirement was not necessary as the scrubber meets all of the statutorily mandated emission reduction requirements set forth in RSA 125-O:13.

Question 1-15 reads, "[i]f the response to question 15 is in the negative, please state the basis for your response." Question 1-16 reads, "[i]f the answer to question 15 is in the affirmative please explain the process which PSNH used to decide whether to seek the variance, which employees of PSNH were involved in such decision, and provide any and all correspondence, working papers and documents related to such consideration." In response to Questions 1-15 and 1-16, PSNH referred back to its objection to Question 1-14.

11. PSNH stands by its objections to these questions. In its Motion (at para. 2), TransCanada asserts, "RSA 125-O:17 provides PSNH with authority to potentially avoid the need to install scrubber technology by requesting a variance... ." TransCanada is misguided in its assertion that PSNH had the ability to seek what amounts to a "waiver" of the mandate to install the scrubber set forth in the Mercury Emissions Reduction Law. Most disturbing about TransCanada's belief

¹³ Question 1-14 was "[o]riginally numbered TC-1, Q-TC-015 in the Temporary Rates portion of this docket." Similarly, Questions 1-15 and 1-16 were formerly number 1-16 and 1-17 respectively.

is that it seemingly expects PSNH or the Commission to circumvent the “plain and unambiguous” language of the statute.¹⁴

12. TransCanada states in its Motion (at para. 6), “... PSNH had to consider seeking a variance pursuant to RSA 125-O:17, which includes technological or economic infeasibility as the basis for a request for a variance.” This statement is an erroneous restatement of the law contained in RSA 125-O:17. RSA 125-O:17 in its entirety reads:

125-O:17 Variances. – The owner may request a variance from the mercury emissions reduction requirements of this subdivision by submitting a written request to the department. The request shall provide sufficient information concerning the conditions or special circumstances on which the variance request is based to demonstrate to the satisfaction of the department that variance from the applicable requirements is necessary.

I. Where an alternative schedule is sought, the owner shall submit a proposed schedule which demonstrates reasonable further progress and contains a date for final compliance as soon as practicable. If the department deems such a delay is reasonable under the cited circumstances, it shall grant the requested variance.

II. Where an alternative reduction requirement is sought, the owner shall submit information to substantiate an energy supply crisis, a major fuel disruption, an unanticipated or unavoidable disruption in the operations of the affected sources, or technological or economic infeasibility. The department, after consultation with the public utilities commission, shall grant or deny the requested variance. If requested by the owner, the department shall provide the owner with an opportunity for a hearing on the request.

¹⁴ When determining the meaning of a statute, the New Hampshire Supreme Court examines the “intent of the legislature as expressed in the words of a statute considered as a whole.” *N.H. v. Dimaggio*, 44 A.3d 468, 470 (N.H. 2012). In matters of statutory interpretation and construction, the Court examines the statute’s words “not in isolation, but in the context of the entire statute and statutory scheme.” *N.H. Health Care Ass’n v. Governor*, 161 N.H. 378, 385 (2011). The analysis begins with the statute’s language, construed “according to its plain and ordinary meaning.” *Dimaggio*, 44 A.3d at 470. If “the language of a statute is plain and unambiguous, [the Court will] not look beyond it for further indications of legislative intent.” *Phaneuf Funeral Home v. Little Giant Pump Co.*, No. 2011-151, 2012 WL 2476952, at *2 (N.H., June 29, 2012).

13. RSA 125-O:17, II clearly and expressly applies only to situations “***Where an alternative reduction requirement is sought...***.” The reduction requirements of the Mercury Emissions Reduction Law are set forth in RSA 125-O:13, sections II through VIII. RSA 125-O:17, II provided PSNH with an opportunity to “*request a variance from the mercury emissions reduction requirements of this subdivision*” in certain enumerated circumstances. The variance provision of RSA 125-O:17 *does not* allow the Department of Environmental Services to *waive* or repeal the public interest determinations of the General Court or the legislative mandate that the scrubber “shall be installed at Merrimack Station” (RSA 125-O:11, I) and that “The owner shall install and have operational scrubber technology to control mercury emissions at Merrimack Units 1 and 2... .” (RSA 125-O:13, I).

14. Moreover, the fact that TransCanada’s request is based upon a faulty and erroneous interpretation of the variance provision is also demonstrated by its failure to read the statute in its entirety. Ignoring the prefatory premise of the statute, TransCanada goes on to erroneously latch on to one provision of a law that is protected from such piecemeal interpretation by an unusual and critical non-severability provision (RSA 125-O:10). Non-severability provisions, in contrast to severability clauses or provisions, are rarely found in statutes and thus must be given careful consideration and weight;¹⁵ in fact, RSA 125-O:10 appears to be the only such statutory provision in New Hampshire law at this time. The provision states: “No provision of RSA 125-O:1 through RSA 125-O:18 of this chapter shall be implemented in a manner inconsistent with the

¹⁵ See, Friedman, *Inseverability Clauses in Statutes*, 64 U. Chi. L. Rev. 903 (1997) (“The presence of an inseverability clause evidences a legislative compromise and a deliberate attempt by the statute’s drafters to inseverably link statutory provisions. An exploration by courts of the legislative intent behind an inseverability clause will necessarily undermine the clause’s ability to enforce legislative compromise. By deferring to the plain meaning of inseverability clauses, courts will encourage the legislative process by preserving an effective tool for enforcing legislative deals.”)

integrated, multi-pollutant strategy or RSA 125-O:1 through RSA 125-O: 18 of this chapter, and to this end, the provisions of RSA 125-O:1 through RSA 125-O:18 of this chapter are not severable.” The non-severability provision ensures that, specifically, a wet flue gas desulphurization system will be built at Merrimack Station since such construction is mandated in and elaborated upon in numerous integrated provisions; there is no flexibility in this legislative mandate. The variance provision’s applicability thus is definitively limited not only by the plain wording of the provision (limiting the provision to schedule and to reduction amount) but significantly by the non-severability mandate. The General Court emphasized the importance of the non-severable nature of its mandate in its public interest determination at RSA 125-O:11 -- “VIII. The mercury reduction requirements set forth in this subdivision represent a careful, thoughtful balancing of cost, benefits, and technological feasibility and therefore the requirements shall be viewed as an integrated strategy of non-severable components.”¹⁶

15. TransCanada would impermissibly read the statute in a way that expands the variance clause to essentially nullify or swallow up the non-severability clause and turn the construction of the scrubber itself into an option dependent on a number of variables. As the New Hampshire Supreme Court has stated repeatedly, however, in matters of statutory interpretation and construction, a statute’s words must be examined “not in isolation but in the context of the entire statute and statutory scheme.” *N.H. Health Care Ass’n v. Governor*, 161 N.H. 378, 385 (N.H. 2011). The “Multiple Pollutant Reduction Program” law set forth in RSA Chapter 125-O is unique in that it contains a non-severability provision which specifically references the mercury emissions reduction requirements as a non-severable unit—requirements that cannot be picked

¹⁶ This provision was also quoted by the Supreme Court in its *Stonyfield Farm* decision. 159 N.H. at 229.

apart. This provision has a critical and limiting impact on the variance provision and its interpretation. Specifically, a number of provisions prior to the variance provision require or are based on the construction of a wet flue gas desulphurization system at Merrimack Station, and those provisions that require such construction are not severable, cannot be eliminated, and are certainly not subject to the variance. The Legislature intended the mandatory construction of the scrubber to be an integral part of the overall Multiple Pollution Reduction Program. Thus, the non-severability provision protects the intent of the Legislature and the integrity of the statute as an integrated whole. The variance provision cannot be misconstrued in an attempt to bolster an argument that the mandated construction of the scrubber is discretionary. The variance provision merely allows an owner of an affected source to request a “variance from” the in-service schedule or the reduction requirement. At no time did PSNH have cause to seek permission to deviate from the mandated compliance date of July 1, 2013. Nor did PSNH need to reduce or alter the mandated reduction requirement. To the contrary, Merrimack Station has consistently exceeded the law’s requirements by having the scrubber operational in September, 2011, and by surpassing the reduction requirements established by the Legislature.¹⁷

16. Given the plain and unambiguous language of the statute, coupled with the non-severability mandate of the Legislature, the variance provision (RSA 125-O:17) cannot be interpreted to circumvent the law as desired by TransCanada. Thus, TransCanada’s Motion to Compel responses to these questions should be denied.

¹⁷ See the Progress Reports filed by PSNH in Docket No. DE 08-103.

17. The next issues raised by TransCanada pertain to PSNH's lobbying costs and legislative efforts, and are presented in Questions 1-7 through 1-11, and 2-3. Question 1-7 reads:

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

PSNH responded to that question as follows:

The enactment of 2006 N.H. Laws, Chapter 105, "AN ACT relative to the reduction of mercury emissions" involved a collaborative effort which included the legislature, the NH DES, environmental organizations, and the Company, among others. Individuals employed by or otherwise compensated by PSNH who directly participated in those collaborative efforts include Donna Gamache and Terrance Large. Other Company employees were involved in providing information to those directly involved in the collaborative effort.

18. As PSNH has already responded to this question, its inclusion in a Motion to Compel is inappropriate. If TransCanada is dissatisfied with this response, its remedy is to submit its own testimony regarding the issue. Consequently, TransCanada's Motion to Compel concerning this question should be denied.

19. Next, in Questions 1-8 and 1-11, TransCanada requests that PSNH "[p]rovide detail about how much PSNH spent on outside lobbyists who assisted PSNH during the 2006 legislative Session."¹⁸ PSNH objected to these questions, stating, "PSNH objects to this response as the information requested is not relevant to the subject of this proceeding. Moreover, any lobbying costs incurred by PSNH are recovered 'below the line' and thus are not

¹⁸ Question 1-11 is identical, except it requests detail pertaining to "registered lobbyists" during the 2009 legislative session.

included as part of the costs sought to be recovered by PSNH in this proceeding.”¹⁹

20. N.H. Code Admin. R. Puc 310.02 provides that:

No utility shall recover, in any manner, from any person other than the shareholders or other owners of such utility any direct or indirect expenditure by such utility for promotional, political or institutional advertising, or promotional, political or institutional activities except as provided for in Puc 310.03.²⁰

21. The Commission’s regulation clearly provides that PSNH is barred from recovering costs associated with political advertising or political activities. Moreover, PSNH is not seeking to recover costs associated with the aforementioned expenses. As a result, since Questions 1-8 and 1-11 seek “irrelevant or immaterial information,” TransCanada’s Motion to Compel responses to this question should be denied.²¹

22. Next, Questions 1-9 and 1-10 pertain to legislative efforts concerning Senate Bill 152 and House Bill 496 in 2009.²² In Question 1-9, TransCanada requested that PSNH, “[p]lease provide a copy of any document provided to any elected or appointed government official in New Hampshire related to its position opposing legislative approval for Senate Bill 152 and House Bill 496 in 2009.” Question 1-10 requests that PSNH “[p]lease identify any individual employed by or otherwise compensated by PSNH to work on its behalf to oppose legislative approval for

¹⁹ PSNH’s response to Question 1-11 also reads: “See NH Code Admin. Rule Puc 310. In addition, lobbying reports required by RSA Chapter 15 are publicly available from the Secretary of the State.

²⁰ N.H. Code Admin. R. Puc 310.02.

²¹ *Re Pub. Serv. Co. of N.H.*, Docket No. DE 10-195, Order No. 25,174 (2010) *slip op.* at 17 (citing *City of Nashua*, 91 N.H. P.U.C. 452, 454 (2006)).

²² Senate Bill 152 of the 2009 session is “AN ACT relative to an investigation by the public utilities commission to determine whether the scrubber installation at the Merrimack station is in the public interest of retail customers.” House Bill 496 of the 2009 session is “AN ACT establishing a limit on the amount of cost recovery for the emissions reduction equipment installed at the Merrimack Station.”

Senate Bill 152 and House Bill 496 in 2009.” PSNH’s response to both questions was that “PSNH objects to this question as the information sought is not relevant to the subject of this proceeding; i.e., recovery of the prudent costs of complying with the legislative mandate contained in 2006 N.H. Laws, Chapter 105, “AN ACT relative to the reduction of mercury emissions.”

23. PSNH stands by its objections to these questions. As PSNH noted in its response, the subject of this proceeding is the “recovery of the prudent costs of complying with the legislative mandate contained in 2006 N.H. Laws, Chapter 105” As such, information pertaining to the Company’s legislative efforts in 2009 regarding the consideration of SB152 (which sought to “determine whether the scrubber installation at the Merrimack station is in the public interest of retail customers) and HB496 (which sought to “establish[] a limit on the amount of cost recovery for the emissions reduction equipment installed at the Merrimack Station”), constitutes “irrelevant or immaterial information.” The Legislature’s ultimate action is what is relevant for this proceeding - - not what the Legislature considered as part of any deliberations. This Commission is a creature of the Legislature and only has those powers and authorities delegated to it by the Legislature.²³ The Legislature mandated the installation of the scrubber.²⁴ How, or why, the Legislature came to its conclusion is not germane to the prudence of PSNH’s conduct in complying with the law. The Legislature’s subsequent decisions in 2009 to find both SB152 and HB496 “inexpedient to legislate” are further ratifications of the public interest findings and the

²³ *Appeal of Richards*, 134 N.H. 148, 158 (1991).

²⁴ *See Investigation of PSNH’s Installation of Scrubber Technology at Merrimack Station*, DE-08-103, Order No. 24,898 (Sept. 19, 2008) (“the Legislature has made the public interest determination and **required** . . . PSNH, to install and have operational scrubber technology to control mercury emissions no later than July 1, 2013.”) (emphasis in original).

mandate to construct the scrubber contained in the Mercury Emissions Reduction Law.

Therefore, TransCanada's Motion to Compel responses to these questions should be denied.²⁵

24. Furthermore, the Commission's decision pertaining to TransCanada's questions concerning lobbying costs and legislative efforts has implications beyond this evidentiary dispute. TransCanada would like the Commission to impose a new standard, set forth in paragraph 13 of its Motion, that any time there is a public policy decision made by the Legislature which is "disadvantageous in terms of ... ratepayers," a public utility may be found imprudent if it does not lobby against and challenge the Legislature's action.²⁶ Clearly, that is not a policy that this Commission should, or could, impose.²⁷

25. TransCanada has failed to provide any authority to demonstrate that the request is "relevant and 'reasonably calculated to lead to the discovery of admissible evidence.'"²⁸ Rather, TransCanada seeks to employ this discovery process as an "open-ended fishing expedition[]." ²⁹

26. TransCanada also finds issue with PSNH's responses to questions regarding correspondence with DES and statements by DES Commissioner Michael Nolin. Question 2-2 reads, "[p]lease provide copies of any and all correspondence that PSNH had with DES that

²⁵ *Re Pub. Serv. Co. of N.H.*, 2010 WL 4917338, at *10 (N.H.P.U.C.) (citing *City of Nashua*, 91 N.H. P.U.C. 452, 454 (2006)).

²⁶ Allowing TransCanada's theory, the state's electric utilities would all be imprudent for failing to challenge the RPS law, since it is costing customers millions of dollars per year in higher costs. Similar results would occur for other public policy initiatives such as PURPA, LEEPA, and the System Benefits Charge.

²⁷ *Citizens United v. Federal Election Commission*, 130 S. Ct. 876, 886, 175 L. Ed. 2d 753 (2010) ("The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether.")

²⁸ *N.H. Ball Bearings, Inc. v. Jackson*, 158 N.H. 421, 429-30 (2009) (quoting N.H. Super. Ct. Rule 35 (b)(1)).

²⁹ *Id.*

pertains to question #1 above.” To which, PSNH responded, “[t]here is no correspondence between PSNH and NHDES on scrubber costs.”

27. In Question 2-3, TransCanada requested that PSNH:

Please provide any and all documents that PSNH or any of its employees, officials, representatives, agents or lobbyists provided to DES, any legislator or any state official to support the statement in DES Commissioner Michael Nolin’s January 12, 2006 letter to the House Science Technology & Energy Committee in support of HB 1673 to the effect that the costs of the scrubber will be fully mitigated by the savings in SO₂ emission allowances.

PSNH’s response to this question was that “PSNH has never claimed that the cost of the scrubber will be fully mitigated by the savings avoided in the purchase of SO₂ emissions allowances.”

Since PSNH has already responded to these questions, their inclusion in a Motion to Compel is inappropriate. As noted earlier, if TransCanada is dissatisfied with this response or seeks different answers, its remedy is to submit its own testimony regarding the issue. Consequently, TransCanada’s Motion to Compel a response to these questions should be denied.

28. Finally, TransCanada also moved to compel responses to Questions 1-13, 2-4, 2-5, and 2-6. However, TransCanada’s Motion does not discuss those questions at all, thus failing to “Specify the basis of the motion” as required by Rule Puc 203.09 (i)(3) and the Supreme Court’s directive that a litigant must demonstrate that the information is “relevant and ‘reasonably calculated to lead to the discovery of admissible evidence.’”³⁰ Hence, its Motion concerning these questions must be denied.

³⁰ *Id.*


WHEREFORE, PSNH objects to TransCanada's Motion to Compel. TransCanada has failed to demonstrate that the information it seeks has any bearing on these proceedings.

For the reasons expressed herein, PSNH respectfully requests that the Commission:


- A. Deny TransCanada's Motion to Compel; and
- B. Grant such other and further relief as justice may require.

Respectfully submitted this 26th day of July, 2012.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: 

Robert A. Bersak
Assistant Secretary and Associate General Counsel
Public Service Company of New Hampshire
780 N. Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330
603-634-3355
Robert.Bersak@PSNH.com

By: 

Elizabeth A. Gray
Summer Law Associate
Public Service Company of New Hampshire
780 N. Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330
Elizabeth.Gray@PSNH.com

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2012, 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).



Robert A. Bersak

Assistant Secretary and Associate General Counsel
780 North Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330

(603) 634-3355
Robert.Bersak@psnh.com