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VIA EMAIL AND FIRST CLASS MAIL

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



***Re: DE 11-250, Public Service Company of New Hampshire Investigation of
Merrimack Station Scrubber Project and Cost Recovery – TransCanada’s Motion to Compel***

Dear Ms. Howland:

In response to PSNH’s September 20, 2012 correspondence updating the Commission on the status of the Mercury Baseline Appeal, TransCanada strongly disagrees with PSNH’s characterization that “TransCanada’s data request questions 3-20 and 3-21 ... now appear to be moot.” To the contrary, the data requests remain relevant and should be considered by the Commission in the context of the pending Motion to Compel.

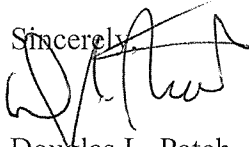
TransCanada’s data requests were not premised upon either affirmation or remand of the Department of Environmental Services Mercury Baseline Determination, but upon the substance of the Department’s determination. *See, e.g.*, Data Request TC-03 (“assuming that the ruling remains in effect pending or following any appeal, [what technologies or costs are reasonably anticipated]”). The critical assumption underlying the requests was not whether the Mercury Baseline Determination had been affirmed or remanded, but whether there were additional costs associated with the mercury reduction levels that would be required as a result of the determination. TransCanada’s procedural characterization, made in good faith, does not affect the validity and relevancy of the data requests.

Furthermore, contrary to PSNH’s characterization that PSNH’s appeal was “unanimously granted,” remand to the Department does not necessarily mean that the substance of the Department’s baseline determination will change. The Air Resources Council’s authority is limited to remanding, not determining, the baseline levels. *See* RSA 21-O:11 and :14; RSA 541-A; Env-AC Chapter 200, *et. seq.* A written order has not yet issued and the issues to be addressed by the Department on remand have not yet been determined.

Even if the Department does decide to change the baseline determination as a result of remand, which it is not required to do, the change will not necessarily reflect PSNH’s view of

appropriate baseline levels. Therefore, despite current uncertainties, which existed separately from the procedural status at the time of the data requests, the requests remain valid and are not moot.

TransCanada respectfully requests that the Commission continue to consider all pending data requests for purposes of ruling on TransCanada's Motion to Compel.

Sincerely,

Douglas L. Patch

cc. Service List in DE 11-250

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