

STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Docket No. DE 11-250

Public Service Company of New Hampshire
Investigation of Merrimack Station Scrubber Project and Cost Recovery

MOTION OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
TO COMPEL THE OFFICE OF CONSUMER ADVOCATE
TO RESPOND TO DATA REQUESTS

Pursuant to Rule Puc 203.09 (i), Public Service Company of New Hampshire (“PSNH”) hereby moves the Commission to compel the Office of Consumer Advocate (“OCA”) to respond to certain data requests submitted to it by PSNH in accordance with the procedural schedule for this proceeding.

In support of this Motion, PSNH states:

1. On November 15, 2011, the Commission issued a secretarial letter stating that it would open a separate docket for the purpose of considering the Scrubber Project, including the in-service status, PSNH’s prudence, the appropriate rate treatment and the costs of the Scrubber Project. By Order of Notice dated December 1, 2011, the Commission determined that the purpose of this docket was, *inter alia*, to determine whether the costs of the Scrubber Project were prudently incurred consistent with the requirements of RSA 125-O:11 *et seq.* and are eligible for recovery through default service rates as provided by RSA 125-O:18.
2. On December 12, 2011, the OCA notified the Commission that it will be participating in this docket on behalf of residential ratepayers consistent with RSA 363:28.
3. On December 23, 2013, the OCA submitted the pre-filed testimony of Stephen R. Eckberg and Matthew I. Kahal.
4. On January 16, 2014, PSNH timely submitted data requests to the OCA.

5. On February 7, 2014, OCA submitted responses to some of PSNH's data requests and objections to others. (PSNH's questions to OCA were attached as Exhibit A to OCA's "Objection & Motion" dated January 22, 2014.)

6. Earlier in this proceeding, the Commission received motions to compel filed on behalf of other party intervenors. *See* Motions to Compel filed by the Conservation Law Foundation dated February 10, 2012; TransCanada dated July 16, 2012, September 11, 2012, and October 9, 2012; as well as the motion seeking to compel the deposition of Gary Long, dated August 16, 2013.

7. In those earlier motions to compel, parties to this proceeding have argued the law regarding the obligation to respond to properly submitted discovery questions. For example, in its first Motion to Compel, TransCanada noted at ¶5:

The standard for discovery in Commission proceedings is broad and extends to information that is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. *Re Investigation into Whether Certain Calls are Local*, 86 NH PUC 167, 168 (2001). The Commission will typically allow "wide-ranging discovery" and will deny discovery requests only when it "can perceive of no circumstance in which the requested data would be relevant." *Re Lower Bartlett Water Precinct*, 85 NH PUC 371, 372 (2000). A party in a legal proceeding in New Hampshire is entitled to "be fully informed and have access to all evidence favorable to his side of the issue. This is true whether the issue is one which has been raised by him or by his opponent, and whether the evidence is in the possession of his opponent or someone else." *Scotsas v. Citizens Insurance Co.*, 109 N.H. 386, 388 (1969).

8. In response to the prior motions to compel, the Commission has stated:

A. STANDARD OF REVIEW

In addressing motions to compel discovery responses, we consider whether the information being sought is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. *See, Investigation into Whether Certain Calls are Local*, Order 23,658 (2001) at 5. "[I]n general, discovery that seeks irrelevant or immaterial information is not something we should require a party to provide." *City of Nashua*, Order 24,681 (2006) at 2. In Order 24,681 we stated:

In the context of civil litigation, New Hampshire law favors liberal discovery, *see, e.g., Yancey v. Yancey*, 119 NH 197, 198 (1979), and discovery is regarded as "an important procedure 'for probing in advance of trial the adversary's claims and his possession or

knowledge of information pertaining to the controversy between the parties.” *Johnston v. Lynch*, 133 NH 79, 94 (1990) (citing *Hartford Accident etc., Co. v. Cutter*, 108 NH 112, 113 (1967)). Consistent with Superior Court Rule 35(b) regarding the scope of discovery, we require parties to show that the information being sought in discovery is relevant to the proceeding or is reasonably calculated to lead to the discovery of admissible evidence.

We review the Motion and the Objection in light of these principles and the statutory directive in RSA 125-O:18 that PSNH “shall be allowed to recover all prudent costs of complying with the requirements of the [mercury emissions] subdivision in a manner approved by the public utilities commission.” We will apply a liberal approach to discovery, as we consider the parties’ legal arguments concerning the application of RSA 125-O:11-18.

Order No. 25,445 dated December 24, 2012 at 22-23; Order No. 25,398 dated August 7, 2012 at 2-3.

9. PSNH seeks an order from the Commission compelling OCA to respond to question numbers 83- 89, 93, 94, 103, and 104. OCA’s responses to those questions are included at Attachment A hereto.

10. Questions 83 through 89, and 93 are substantially the same as questions TC 1-6, 1-7, 1-9, 1-10, 2-2, and 2-3 asked of PSNH by TransCanada.¹ Those questions were included in TransCanada’s first Motion to Compel. In Order No. 25,398 at pages 11-18, the Commission discussed these questions and determined their relevance and that responses from PSNH were required. As the Commission has already ruled on these questions, PSNH seeks a similar order compelling responses from OCA.

11. Question number 103 requested OCA’s views on the potential public interest benefits of the scrubber. The testimony of Mr. Kahal questions the benefits of pursuing the construction of the scrubber. The underlying legislation included a number of public interest findings, including that the installation of the scrubber was in the public interest and that the requirement for such installation represented a careful, thoughtful balancing of cost, benefits, and technological feasibility. RSA 125-O:11. Question 103 seeks responses regarding potential public interest benefits that are relevant to the testimony submitted by Mr. Kahal on behalf of OCA.

¹ Q 83 →TC 1-6; Q 84 →TC 1-7; Q. 85 →TC 1-9; Q. 86 →TC 1-10; Q. 87-89 →TC 2-2, 2-3; Q. 93→ TC 1-6, 1-7; Q. 94 → TC 1-9, 1-10.

12. Question 104 asked whether OCA is intending to challenge in any manner the final reports produced by Jacobs Consultancy Inc., which was retained by the NHPUC to monitor and report on PSNH's Clean Air Project at Merrimack Station, and if so, OCA was asked to specify any such challenge. OCA objected on the basis that the question is "overly broad." As the purpose of this proceeding is to determine the prudence of PSNH actions to comply with the mandate in RSA 125-O requiring installation of the scrubber, and the Jacobs Report addressed that issue of prudence, this question goes to the very heart of this prudence review - - i.e., is OCA challenging the report by the Commission's expert consultant regarding the prudence of PSNH's actions. PSNH is entitled to a response to this question as it is directly relevant to this proceeding. Moreover, OCA's objection that the question is "overly broad" is puzzling. Either OCA intends to challenge the Jacobs Reports or it does not -- a simple question, deserving a simple response.

13. Pursuant to Rule Puc 203.09(i)(4), PSNH certifies that it made a good-faith effort to resolve the discovery matters discussed herein informally. As a result of that effort, PSNH eliminated a number of additional questions objected to by OCA from this motion.

WHEREFORE, PSNH respectfully requests that the Commission order OCA to provide complete and responsive answers to questions 83 - 89, 93, 94, 103, and 104.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Dated: February 19, 2014

By: 
Robert A. Bersak
Assistant Secretary and Chief Regulatory Counsel
Linda Landis, Bar No. 10557
Senior 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
Linda.Landis@PSNH.com

Wilbur A. Glahn, III, Bar No. 937
Barry Needleman, Bar No. 9446
McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION
900 Elm Street, P.O. Box 326
Manchester, NH 03105
(603) 625-6464
bill.glahn@mclane.com
barry.needleman@mclane.com

CERTIFICATE OF SERVICE

I hereby certify that February 19, 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) and Rule Puc 203.11.



Robert A. Bersak