

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 PSNH
TO RESCIND PARTY INTERVENOR STATUS OF TRANS CANADA

June 13, 2014

TransCanada has expressly and blatantly refused to comply with two Orders issued by this Commission – Order No. 25,663 dated May 8, 2014, and Order No. 25,671 dated May 29, 2014 – with such refusal impairing the orderly and prompt conduct of this proceeding. Pursuant to RSA 541:32 and Rule Puc 203.07, Public Service Company of New Hampshire (“PSNH” or the “Company”) respectfully moves the New Hampshire Public Utilities Commission (“Commission”) to rescind the party intervenor status of TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (together, “TransCanada”).

In support of this Motion, PSNH states:

1. By a “Petition to Intervene” (“Petition”) dated December 7, 2011, TransCanada requested party intervenor status in this proceeding under RSA 541-A:32 and the Commission’s rules at Rule Puc 203.17.

2. By Secretarial Letter dated December 23, 2011, the Commission ruled on various petitions to intervene in this proceeding, including TransCanada's:

The Commission has determined that although NEPGA, TransCanada, Sierra Club and CLF have not demonstrated affected rights, duties, or privileges that mandate their intervention, given the particular circumstances of this docket their intervention requests will be granted pursuant to RSA 541:32, II.

See also Order No. 25,346 dated April 10, 2012 at pp. 2-3. RSA 541-A:32, II provides, "The presiding officer may grant one or more petitions for intervention at any time, upon determining that such intervention would be in the interests of justice ***and would not impair the orderly and prompt conduct of the proceedings.***" (Emphasis added).

3. On January 16, 2014, PSNH timely submitted discovery questions to the parties in this proceeding pursuant to Rule Puc 203.09, "Discovery."

4. Following a number of procedural filings relating to PSNH's discovery questions, on May 8, 2014, the Commission issued Order No. 25,663, "Order on PSNH Motion to Compel." In that Order, the Commission ruled on a number of PSNH's discovery questions, including data request numbers 34a, 52 and 74b, and 75c served on TransCanada by PSNH. The Commission granted PSNH's motion to compel responses to those questions in whole or in relevant part. The Commission expressly, "'ORDERED, that TransCanada shall provide the supplemental responses by May 19, 2014."

5. TransCanada did not comply with the Commission's Order No. 25,663. TransCanada provided no supplemental responses by May 19, 2014.

6. Instead, on May 19, 2014, TransCanada filed a Motion for Reconsideration of Order No. 25,663. In that Motion for Reconsideration, in defiance of the Commission's Order,

TransCanada blatantly and expressly told 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.

and

TransCanada is unwilling to provide any internal studies that non-party affiliates may have done on the effects of horizontal drilling and hydraulic fracturing on future gas supply and prices. To the extent public information exists, PSNH should conduct its own search.

7. On May 29, 2014, the NHPUC issued its Order No. 25,671, "Order on TransCanada's Motion to Reconsider," rejecting TransCanada's Motion for Reconsideration. In that Order, the NHPUC rejected all of TransCanada's arguments, and again ordered TransCanada to provide the relevant information:

ORDERED, that TransCanada shall provide supplemental responses to PSNH data requests 34a, 52, 74b, and 75c, including responsive documents from TransCanada affiliates, on or before June 6, 2014.

8. Remarkably, once again, TransCanada did not comply with the Commission's Order and instead directly challenged the Commission's authority.

9. On June 6, 2014, rather than produce the "voluminous" responsive information that TransCanada indicated it held (Motion for Reconsideration at ¶6), TransCanada again blatantly and expressly told the Commission that it would not comply with the Commission's Order, saying:

It [TransCanada] will not produce non-public forecast information held by non-party affiliates.

10. The Commission has found that the discovery requests in question asked for relevant information. The Commission has twice ordered TransCanada to produce the responsive information in its possession. TransCanada has twice blatantly and expressly informed the Commission that it refuses to comply with the Commission's orders.

11. Not only has TransCanada refused to comply with two direct Orders of the Commission, it has the temerity to tell the Commission that, "The Commission now has to determine how it wants to proceed with the case." (June 6 letter at 2.)

12. TransCanada's decisions to defy the Commission's Orders and to refuse to produce relevant information as part of the discovery process has seriously impaired the orderly and prompt conduct of the proceedings. As a matter of due process, PSNH is entitled to receive the relevant information responsive to its data request questions in the possession of TransCanada. TransCanada's repeated refusals to comply with the Commission's Orders has impacted PSNH's ability to prepare its rebuttal testimony in accordance with the procedural schedule adopted by the Commission on May 16, 2014.

13. As a result of TransCanada's actions, TransCanada has breached one of the statutory requirements for a grant of discretionary intervention, i.e., it ***would not impair the orderly and prompt conduct of the proceedings.*** RSA 541-A:32, II.

14. RSA 541-A:32, V provides authority for the Commission to modify its grant of intervention: “The presiding officer may modify the order at any time, stating the reasons for the modification.” Such authority to “modify” is unlimited, and thus may include rescission of the original grant of intervention.

15. In Order No. 25,646, the Commission noted, “Revocation of intervenor status based on discovery misconduct should be reserved for unusual situations.” Order at 3. The blatant and express refusals of a discretionary intervenor to comply with the Orders of this Commission is clearly such an “unusual situation.” What circumstance can be more extreme than repeated outright refusals to comply with the Commission’s directives?

16. The Commission has held that TransCanada has no demonstrated rights, duties, or privileges at stake in this proceeding; that is, TransCanada has no legal standing to be in this proceeding. TransCanada’s participation in this proceeding was granted per the discretion of the Commission under RSA 541-A:32, II. RSA 541-A:32, II requires that a party granted discretionary intervenor status “*not impair the orderly and prompt conduct of the proceedings.*” TransCanada’s refusal to comply with the Commission’s directives has indeed impaired the orderly and prompt conduct of the proceedings. TransCanada’s refusal to comply with discovery requirements in this case comes not after one Commission Order, but two separate Commission Orders.

17. As a result of TransCanada’s conduct discussed above, the only remedy available to the Commission consistent with PSNH’s due process rights is to rescind TransCanada’s grant of

intervenor status in this proceeding. PSNH urges the Commission to expeditiously grant this requested relief in order to salvage any hopes of maintaining the existing procedural schedule.

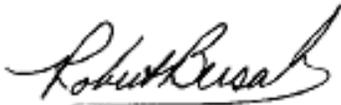
WHEREFORE, for the reasons set forth herein, PSNH respectfully requests that the Commission:

- A. Rescind the party intervenor status of TransCanada; and
- B. Grant such other relief as the Commission deems appropriate.ⁱ

Respectfully submitted,

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Dated: June 13, 2014

By: 

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CERTIFICATE OF SERVICE

I hereby certify that June 13, 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

ⁱ The Commission has authority under RSA 365:12 to refer this matter to the Superior Court for contempt proceedings. *See also Mortgage Specialists, Inc. v. Davey*, 153 N.H. 764 (2006). Such an action is not the subject of this Motion.