

**THE STATE OF NEW HAMPSHIRE  
BEFORE THE  
NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 11-250**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**Investigation of Merrimack Station Scrubber Project and Cost Recovery**

**Objection to Motion of PSNH to Rescind Party Intervenor Status of TransCanada**

NOW COMES TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (together, “TransCanada” or “the Companies”), intervenor in this docket, pursuant to Admin. Rule Puc 203.07(e) and objects to the Motion of Public Service Company of New Hampshire (“PSNH”) to Rescind Party Intervenor Status of TransCanada filed with the Commission in this docket on June 13, 2014 (“Motion”). In support of this Objection TransCanada states as follows:

1. On June 13, 2014 PSNH filed the Motion to rescind TransCanada’s party intervenor status. In support of this Objection to the Motion TransCanada incorporates by reference arguments it has put forth in prior pleadings in this docket on this issue.<sup>1</sup> Attached to TransCanada’s June 6 letter to the Commission were TransCanada’s

---

<sup>1</sup> TransCanada has made the following filings in this docket that include arguments and citations that are relevant to this pleading and incorporated by reference: January 24, 2014 Objection to Public Service Company of New Hampshire’s Data Requests and Motion to Direct PSNH to Submit Reasonable Number of Data Requests; March 3, 2014 Objection to Motion of Public Service Company of New Hampshire to Rescind TransCanada’s Party Intervenor Status or Alternatively to Strike TransCanada’s Objections to PSNH’s Data Requests and Compel Answers to Those Requests; April 25, 2014 Objection to Public Service Company of New Hampshire Motion to Compel TransCanada to Respond to Data Requests; May 19, 2014 Motion for Reconsideration and/or Clarification of Order No. 25,663; and TransCanada letter to the Commission dated June 6, 2014.

responses to the remaining data requests, which included two fuel forecasts, redacted in accordance with the directives of the vendors.

2. Based on its pleadings and actions in this case, it appears PSNH wants TransCanada out of the docket because TransCanada has raised and will continue to raise serious questions about the prudence of PSNH's investment in the scrubber. Throughout this docket PSNH has taken steps to test the mettle and stretch the resources of all parties, but particularly of TransCanada, the one intervening entity with business experience and business interests. As noted in prior pleadings TransCanada has responded to an inordinate number of data requests and in fact provided a response to all of the data requests the Commission has ordered it to respond to, including providing forecasts available to party affiliates, though it declined to provide forecasts produced by or available to non-party affiliates because they would include commercially sensitive confidential information revealing a methodology that would constitute intellectual property or trade secrets. TransCanada also noted that providing confidential responses would be extremely risky given that disclosure to and use by competitors would effectively preclude the ability to fashion any remedies that could adequately compensate for financial damages resulting from disclosure. In comparison it is worth noting the information that PSNH provided (and what it did not provide), when ordered by the Commission, in response to a data request from TransCanada on the fuel forecasts that were available to it at a critical time in the development of the scrubber.<sup>2</sup>

---

<sup>2</sup> The Energy Ventures Analysis forecast that was available to PSNH at the time of its decision to construct the scrubber (summer of 2008), which TransCanada requested in TC 2-1 and which PSNH only provided after objecting and being ordered to do so by the Commission, was provided in a format that was basically useless. As Mr. Hachey noted in his prefiled testimony at p. 24 what PSNH provided only included forecast values through 2018 and it lacked any narrative explanation (see Attachment 16 to Mr. Hachey's prefiled testimony). TransCanada asked Mr. Long about this during his deposition (pp. 73-76) but received no further information or explanation that was helpful in any way. TransCanada could have pursued this

3. TransCanada also submits that it is important to review the trajectory of this docket and to put its compliance in perspective as part of the overall docket. PSNH blamed TransCanada for four months of delay in this docket and said: “TransCanada must not be allowed to continually delay this proceeding by quibbling over discovery.” PSNH’s May 22, 2014 Objection to TransCanada’s Motion for Reconsideration, at 5. It is important to recall that PSNH failed to answer numerous data requests necessitating the filing of Four Motions to Compel by TransCanada and others for responses to fundamental questions such as, for example, requests for the fuel forecasts on which PSNH relied and PSNH’s analysis of various potential environmental compliance issues. See Order No. 25,445. Obviously PSNH as a regulated utility and the regulated utility that is the subject of this docket is in a much different situation than TransCanada, and yet it took numerous steps to frustrate and delay the discovery process to the point where TransCanada gave up seeking further information related to the Energy Ventures Analysis. PSNH is the one seeking recovery of a questionable investment in an old coal fired power plant at a time when the cost of the project had almost doubled from the not-to-exceed number it had provided to the Commission (in the context of the fiscal note associated with the 2006 legislation) and the Legislature (see references to legislative history in prior pleadings).

4. The remedy PSNH is requesting, rescinding TransCanada’s status as a party to the docket, is extraordinary and to our knowledge unprecedented. Moreover, for

---

with yet another pleading but it chose not to bog the docket down any further in discovery disputes over PSNH’s inadequate response. If this is the kind of information that PSNH relied upon when forecasting the price of natural gas at a critical decision moment in the development of the scrubber it should give the Commission even further pause as to the prudence of PSNH’s actions. It should also inform the Commission as to the relevance, value and need for any forecast information from TransCanada affiliates, forecast information that was not even available to PSNH when it made its decisions related to investing in the scrubber. In summary, PSNH failed to produce documents directly relevant to their decision-making process on the scrubber, and meanwhile requests the Commission to remove TransCanada from the docket over documents that are completely unrelated to both PSNH’s decision-making and TransCanada’s testimony.

the reasons TransCanada has articulated in prior filings in this docket on this discovery dispute, it is unjustified. In a prior order in this docket the Commission rejected an earlier request from PSNH to rescind CLF and TransCanada's intervenor status. Order No. 25,646, at 3. Again, TransCanada has responded to an inordinate number of data requests and has complied with the Commission's order, with the exception of providing fuel forecasts produced by or on behalf of non-party affiliates, which it has indicated constituted commercially sensitive confidential information that was intellectual property. Rescinding TransCanada's status for a purported failure to completely respond to one data request out of 425 would be to impose a penalty that far outweighs any possible offense. It would not be in the interests of justice nor would it be in the public interest to rescind the intervenor status of the one remaining intervenor that brings a business perspective to this docket and that has as its customers large industrial and commercial businesses whose interests can be directly or indirectly affected by the outcome of this docket. The most fundamental responsibility that the Commission has is to act as the arbiter between the interests of the customers and those of the regulated utility. RSA 363:17-a. PSNH's customers include the large customers whose interests are not otherwise represented in this docket.

5. TransCanada still has much to contribute to this docket, a docket that is entering its final phase. The focus should be whether the investment in the scrubber at Merrimack Station made by PSNH, a regulated electric utility, was prudent in light of the facts and circumstances known to PSNH at the time it made those decisions. PSNH's data requests and its Motion attempt once again to shift the focus away from where it belongs in this docket.

6. The Office of Consumer Advocate, the Conservation Law Foundation and the Sierra Club support this Objection.

WHEREFORE, TransCanada respectfully requests that this honorable Commission:

- A. Deny PSNH's Motion to Rescind Intervenor status of TransCanada; and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,



Douglas L. Patch  
TransCanada Power Marketing Ltd.  
TransCanada Hydro Northeast Inc.  
By Their Attorneys  
ORR & RENO, P.A.  
45 South Main Street  
Concord, NH 03302-3550  
Telephone: (603) 223-9161  
[dpatch@orr-reno.com](mailto:dpatch@orr-reno.com)

June 20, 2014

Certificate of Service

I hereby certify that on this 20th day of June, 2014 a copy of the foregoing objection was sent by electronic mail to the Service List.

  
\_\_\_\_\_  
Douglas L. Patch