

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

OBJECTION OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
TO JOINT MOTION
TO COMPEL APPEARANCE OF FORMER PSNH PRESIDENT
GARY LONG AS A MATERIAL WITNESS

Pursuant to Rule Puc 203.07(e), Public Service Company of New Hampshire (“PSNH” or “the Company”) hereby objects to the “Motion to Compel Appearance of Former PSNH President Gary Long as a Material Witness” (the “Motion”) submitted by TransCanada Power Marketing, Ltd. and TransCanada Hydro Northeast, Inc. (“TransCanada”), and the Office of Consumer Advocate (“OCA”) (collectively, the “Moving Parties”), dated June 20, 2014. The Motion is premature, unreasonably duplicative, fails to state an adequate basis for the action requested, and is otherwise inconsistent with Commission policy.

In support of this Objection, PSNH states as follows:

1. On July 29, 2013, the Moving Parties, along with the Conservation Law Foundation, Inc. and the Sierra Club, filed a Joint Motion seeking a subpoena for Mr. Gary Long, then President of PSNH, in order to conduct cross-examine him at deposition. On August 27, 2013, the Commission issued such a subpoena ordering Mr. Long to appear for deposition in this proceeding. (Order No. 25,566, August 27, 2013). The Commission set forth a deposition process that included the attendance of a

Hearing Officer in addition to transcription by a court reporter. Pursuant to the Commission's order, Mr. Long was deposed by the Moving Parties and others on September 16, 2013.

2. The Moving Parties took full advantage of Mr. Long's deposition: all parties and interveners in this docket were represented by counsel, the Hearing Officer facilitated objections and requests to compel relevant answers, and the Court Reporter recorded and transcribed the proceeding. In short, the Moving Parties have already been granted an extensive, day-long opportunity to cross-examine and otherwise seek and obtain information from Mr. Long in a hearing-like setting. The deposition also led to ten record requests, to which PSNH has responded. Yet despite this extraordinary opportunity, the Moving Parties now suggest that the deposition was insufficient, and seek *another* subpoena of Mr. Long, relying on the exact same grounds as before. Joint Motion, July 29, 2013 at 4.

3. The Moving Parties claim that Mr. Long must once again be subjected to cross-examination via subpoena because

He is the only witness to prepare and present information to three significant decision making entities: 1) the Northeast Utilities Risk and Capital Committee and Board of Trustees, the Company's decision maker on capital investments; 2) The New Hampshire State legislature, the entity to which PSNH was required to report on the scrubber construction project; See RSA 125-O: 13 (IX); and 3) the Public Utilities Commission and Staff, the administrative agency charged with overseeing utility capital investments and rate recovery.

None of these reasons meet the high-bar the Commission requires for issuance of a subpoena:

a. Mr. Long was extensively cross-examined by the Moving Parties regarding his involvement in Northeast Utilities' risk committee and Board processes during his day-long deposition. As a result, issuance of a subpoena to compel a retired employee to testify a second time regarding the same subject matter would be an unnecessary and excessive use of the Commission's discretionary authority.

b. This Commission has previously held in Order No. 25,566 that:

We [the Commission] see no relevance to PSNH's, or Mr. Long's involvement in cooperating with the Legislature to pass the Scrubber law, or to Mr. Long's alleged attempts to block the Legislature or this Commission from looking further into whether PSNH should have proceeded with the Scrubber project. PSNH is not responsible for the Legislature's actions, nor for ours.

Hence, the second basis alleged by the Moving Parties regarding the necessity to compel Mr. Long's attendance is not relevant to this proceeding.

c. As the Commission is well aware, Mr. Smagula, PSNH's Vice President – Generation has been the main point of contact and spokesperson for PSNH at the Commission regarding the Scrubber Project – not Mr. Long. Mr. Smagula has already presented pre-filed direct testimony in this proceeding – hence, his attendance at the upcoming hearing is known by the intervenors.

4. Effective June 1, 2014, Mr. Long retired from Northeast Utilities. He is no longer employed by PSNH or any other Northeast Utilities subsidiary, nor is he an officer or director of any such entity.

5. The Moving Parties were given an entire day to “prob[e] Mr. Long's intimate knowledge of PSNH's decision making process regarding the Scrubber project.” *Id.* The 245 pages of deposition transcript demonstrate the detail and adequacy of the deposition process. In this Motion, the Moving Parties are convoluting the substance of the information with the form in which it is presented, and asking the Commission to do the same.

6. The Moving Parties state without support that the deposition transcript would not be “sufficient without the sponsoring witness.” Yet the Moving Parties make no attempt to show how the cross-examination of Mr. Long during his deposition is insufficient. They have failed to identify any part that might “require clarification” or is “incomplete”. The Moving Parties seek the

Commission to *once again* order a subpoena because there *could* be information in the deposition transcript that is unclear or incomplete. A “second bite of the apple” is unnecessary and uncalled for.

7. The Motion is also premature. The Moving Parties have not alleged any attempt to contact Mr. Long to inquire whether he would voluntarily appear as a witness. The Moving Parties have therefore not shown a need for seeking extraordinary relief.

8. The Motion is also premature for a second reason -- as the Moving Parties concede, the Company has yet to determine who will testify at the hearing. This is because the discovery process on intervenor testimony remains incomplete, directly resulting from TransCanada’s continued refusal to obey Commission orders to produce relevant information - - information that the Commission has found that “PSNH made ‘a particularized showing’ of a ‘substantial need’ for” and that is “not otherwise available.” Until TransCanada’s refusal to comply with Commission orders is resolved, the discovery process remains incomplete, and the Company cannot determine who it will present at the hearing. Hence, this Motion is premature until the panel of PSNH witnesses can be established and the scope of their expertise is known.

9. Significantly, the Moving Parties are not entitled to relief, having failed to observe the doctrine of “clean hands”. See *Manchester Gas Co. v. City of Manchester*, 64 NH PUC 424 (1979) and 65 NH PUC 20 (1980). TransCanada, in an act of contempt, has twice refused to comply with Commission Orders compelling it to produce relevant information – information which TransCanada admitted it possesses and which it described as being “voluminous.” (Motion for Reconsideration at ¶6). Now, in an amazing display of *chutzpah*, TransCanada asks the Commission to use its authority to *compel the production of evidence* – the very authority which TransCanada refuses to comply with itself. Apparently, TransCanada believes that the orders of this Commission only apply to others, and not to it. Accordingly, the Commission should deny the Motion.

WHEREFORE, PSNH objects to the Motion to Compel Appearance of Former PSNH President Gary Long as a Material Witness.

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

- A. Deny the Motion to Compel Appearance of Former PSNH President Gary Long as a Material Witness; and
- B. Grant such other and further relief as justice may require.

Respectfully submitted this 30th day of June, 2014, by:

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2014, I caused an electronic copy of this filing to be served with each person identified on the Commission's service list for this docket pursuant to Rule Puc 203.02(a).



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