

**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 IN LIMINE OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
TO STRIKE PORTIONS OF THE PREFILED TESTIMONY OF
MICHAEL E. HACHEY**

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 the secretarial letter dated September 2, 2014 in this docket and objects to the Motion in Limine of Public Service Company of New Hampshire ("PSNH") to Strike Portions of the Prefiled Testimony of Michael E. Hachey dated September 10, 2014 ("Motion"). In support of this Objection, TransCanada states as follows:

1. On September 10, 2014, PSNH filed a motion to strike portions of Mr. Hachey's prefiled testimony relating to PSNH's responsibility to seek a variance under the scrubber law and relating to the used and useful concept. In this Motion PSNH asked the Commission to strike four specific portions of Mr. Hachey's prefiled testimony: page 4, lines 7-10, page 6, line 22 through page 7, line 2, and page 28, lines 14-16 all relating to the variance provision; and page 23 lines 17-20 relating to the used and useful concept. Motion at 2-3. For the reasons set forth below, PSNH's motion must fail.

2. On December 23, 2013 TransCanada submitted the prefiled testimony of Michael E. Hachey and on December 31, 2013 PSNH filed two separate motions to strike portions of Mr. Hachey's testimony regarding the variance provision in the scrubber law and the used and useful concept. On March 26, 2014 the Commission issued Order No. 25,640 (hereinafter "March 2014 Order") in which it denied PSNH's motions to strike testimony based on the used and useful concept and the variance provision without prejudice. As the Commission noted in the March 2014 Order, it denied the PSNH motions without prejudice because PSNH's prayers for relief were not concise in that they did not state the specific testimony to be stricken.

3. In the March 2014 Order, regarding Mr. Hachey's testimony on the variance provision on pages 4 and 28, the Commission said: "We note that the Variance Motion did cite two specific statements from Mr. Hachey's testimony, quoted in footnote 1 above. Aside from our blanket denial of the Variance Motion, we would nonetheless deny the motion to strike this testimony because it merely paraphrases RSA 125-O:17." March 2014 Order at 10, n. 3. Despite this clear statement from the Commission in the March 2014 Order, in this latest Motion PSNH requests once again that the Commission strike the same two statements in Mr. Hachey's testimony regarding the variance statute. These two statements are the ones on pages 4 and 28 of Mr. Hachey's prefiled testimony cited above, and also the same ones cited in footnote 1 of the Commission's March 2014 Order and on page 2 of the December 31, 2013 Variance Motion and accordingly they should not be stricken.

4. On September 8, 2014 the Commission issued Order No. 25,714 addressing the Office of Consumer Advocate's motion to strike portions of the PSNH

rebuttal witnesses' testimony (hereinafter the "September 2014 Order"). In the September 2014 Order the Commission limited "testimony of public interest benefits to those benefits predicted before, or contemporaneous with, the decisions at issue in this docket." The Commission said it would not allow "hindsight testimony as to whether those benefits were realized because such testimony is not relevant to PSNH's decision making at the time the expenditures were planned and made." September 2014 Order at 11.

5. PSNH's latest Motion would have the Commission strike not only the two statements in Mr. Hachey's testimony that it already indicated it would not strike, but another statement on page 6 of Mr. Hachey's testimony that also paraphrases the variance provision in the scrubber law. Mr. Hachey indicates: "First, the law contains the variance provision in RSA 125-O:17, noted above, which gives the owner the ability to ask for a variance in the schedule or the reduction requirements."¹ Striking this statement would be inconsistent with what the Commission said in footnote 3 in the March 2014 Order. For the same reasons the Commission articulated in the footnote in the March 2014 Order, *i.e.* that Mr. Hachey's testimony paraphrases the statute, PSNH's Motion to strike this particular statement in Mr. Hachey's testimony should be denied.

¹ Here is the language in RSA 125-O:17 which Mr. Hachey's statement paraphrases:

125-O:17 Variances. – The owner may request a variance from the mercury emissions reduction requirements of this subdivision by submitting a written request to the department. The request shall provide sufficient information concerning the conditions or special circumstances on which the variance request is based to demonstrate to the satisfaction of the department that variance from the applicable requirements is necessary.

I. Where an alternative schedule is sought, the owner shall submit a proposed schedule which demonstrates reasonable further progress and contains a date for final compliance as soon as practicable. If the department deems such a delay is reasonable under the cited circumstances, it shall grant the requested variance.

II. Where an alternative reduction requirement is sought, the owner shall submit information to substantiate an energy supply crisis, a major fuel disruption, an unanticipated or unavoidable disruption in the operations of the affected sources, or technological or economic infeasibility. The department, after consultation with the public utilities commission, shall grant or deny the requested variance. If requested by the owner, the department shall provide the owner with an opportunity for a hearing on the request.

6. The other statement from Mr. Hachey's prefiled testimony that PSNH is now asking the Commission to strike (page 23, lines 17-20) is the following:

Q. Doesn't this analysis amount to Monday morning quarterbacking?

A. No, not at all. The analysis works within the framework of information that was available to PSNH during 2008, which was the critical period for PSNH to have carefully assessed whether or not the scrubber would be "used and useful" and as a consequence economically beneficial to its customers.

This testimony specifically relates to PSNH's decision making *at the time the expenditures were planned and made*. It is not hindsight testimony about whether certain benefits were realized after the fact. It is testimony related to the specific time period when decisions to go forward were made and expenditures were planned and made and it is consistent with the Commission's ruling in the September 2014 Order. Therefore, PSNH's request that the Commission strike this portion of Mr. Hachey's testimony should also be denied.

7. Finally, in the Motion PSNH asks the Commission to treat Mr. Hachey's testimony with regard to legal analysis or legislative history in the same manner as it intends to treat similar portions of PSNH's rebuttal testimony. Motion at 3. TransCanada fully expects that the Commission will be consistent in how it treats all testimony being provided in this docket.

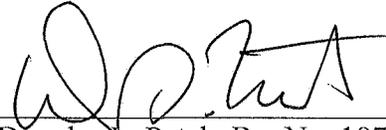
WHEREFORE, TransCanada respectfully requests that this honorable Commission:

A. Deny the September 10, 2014 Motion in Limine of Public Service Company of New Hampshire to Strike Portions of the Prefiled Testimony of Michael E. Hachey; and

B. Grant such further relief as it deems appropriate.

Respectfully submitted,

TransCanada Power Marketing Ltd.
TransCanada Hydro Northeast Inc.
By Their Attorneys
ORR & RENO, P.A.
45 South Main Street
P.O. Box 3550
Concord, NH 03302-3550

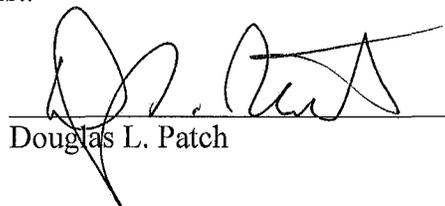


Douglas L. Patch, Bar No. 1977
Rachel A. Goldwasser, Bar No. 18315
(603) 223-9161
dpatch@orr-reno.com
rgoldwasser@orr-reno.com

September 17, 2014

Certificate of Service

I hereby certify that on this 17th day of September, 2014 a copy of the foregoing motion was sent by electronic mail to the Service List.



Douglas L. Patch

1199315_1