

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

DE 09-180

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
2010 PROPOSED DEFAULT ENERGY SERVICE RATE**

MOTION TO COMPEL

NOW COMES TransCanada Power Marketing Ltd. (“TransCanada”) and, pursuant to N.H. Admin. Rule Puc 203.09(i), respectfully moves this honorable Commission to compel Public Service Company of New Hampshire (“PSNH”), the petitioner in the above-captioned docket, to provide TransCanada with the response to one data request to which PSNH has objected. In support of this motion, TransCanada states as follows:

1. During the first round of discovery in the instant action, TransCanada, an intervenor in this docket, propounded, *inter alia*, the following data request upon PSNH on October 29, 2009:

13. Please provide copies of any guidelines, standard operating procedures or other forms of guidance relied upon by the individuals who make power purchases on behalf of PSNH.

2. On November 9, 2009 PSNH responded to the foregoing data request as follows:

“PSNH objects to this question pursuant to Rule Puc 203.09. The information sought by these questions is confidential business information which if revealed, would cause significant competitive harm to the company and its customers. Therefore, this information would not be supplied to potential suppliers, such as TransCanada. The benefits of disclosing this information to potential suppliers are outweighed by the harms that disclosure would likely cause. The information sought by this question is neither

relevant nor material to this proceeding. The information sought by these questions is not reasonably calculated to lead to evidence admissible in this proceeding.”

3. In an effort to resolve this discovery dispute informally, as required by Puc 203.09, the undersigned counsel sent an email to PSNH’s attorney on November 10, 2009 to determine if PSNH would be willing to provide the requested information to TransCanada under a protective agreement. By electronic mail dated November 10, 2009, Attorney Eaton indicated that PSNH would not be willing to provide this information under a confidentiality agreement.

4. The requested information goes to the very heart of the issue that the Commission must determine, i.e. whether the costs of the power that it purchases to meet default service customer demand are reasonable and prudent. RSA 369-B:3, IV(b)(1)(A). The practices PSNH uses and the guidelines it follows in purchasing such power are clearly relevant and/or likely to lead to information that is relevant to this proceeding.

5. TransCanada seeks the requested information that PSNH is withholding solely for the purpose of developing and presenting its position in this case on the issue of whether PSNH has met its burden of proving that it meets the criteria set forth in the statute cited above and whether any recommendation PSNH might have to transfer some portion of the costs of providing such power to customers who have migrated from default service is appropriate, reasonable and consistent with restructuring principles. This information should be made available to the Commission, its staff, the Office of Consumer Advocate and intervenors such as TransCanada.

6. As this Commission has noted on prior occasions, “the rule for when discovery is appropriate in proceedings before the Commission is a liberal one: ‘[Discovery should be relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence.]’” *Re City of Nashua*, 91 NH PUC 344, 345 (2006), quoting *Public Service Company of New Hampshire*, 89 NH PUC 226, 229 (2004). As the Commission noted in *Re Public Service Company of New Hampshire*, 86 NH PUC 730, 731 (2001): “[W]e will deny a motion to compel discovery only ‘when we can perceive of no circumstance in which the requested data will be relevant’ (citation omitted)”.

7. PSNH’s objections to this data request are without merit. First, the request is clearly relevant to this proceeding or likely to lead to the discovery of admissible evidence for the reasons noted above. Second, to the extent that the Commission believes this information should be kept confidential that can be accomplished through a non-disclosure agreement, though TransCanada disputes that this information should be confidential. Third, it would not be unduly burdensome to provide this information. Finally, and perhaps most importantly, because PSNH is a regulated utility, the procedures it uses to purchase power, the costs of which are borne by PSNH’s ratepayers, and the process that it uses and guidelines it follows to purchase power, should be open and transparent. The benefits of keeping such information open to the public clearly outweigh any harm that might be caused by making such information available.

8. TransCanada respectfully submits that the Commission’s evaluation of PSNH’s proposed rate for 2010 will be enhanced by TransCanada’s participation in this docket and that, in order for its participation to be meaningful, TransCanada must have

access to this information and believes that the Commission must as well. Due process requires no less.

9. In light of the expedited schedule in this docket, TransCanada respectfully requests that PSNH be directed to respond to this motion on an expedited basis, instead of the 10 days allowed by PUC rule, and that the Commission make a ruling on this motion as soon thereafter as possible. Intervenor testimony is due on November 23 and TransCanada believes it is should be entitled to review the response to the data request before then.

WHEREFORE, TransCanada respectfully requests that this honorable Commission:

A. Order that PSNH provide to TransCanada's representatives and the undersigned counsel, the information requested in TransCanada's data request #13 as indicated above; and

B. Grant such further relief as it deems appropriate.

Respectfully submitted,

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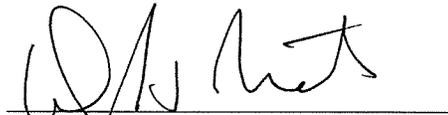


Douglas L. Patch

November 12, 2009

Certificate of Service

I hereby certify that on this 12th day of November, 2009 a copy of the foregoing motion was sent by electronic mail or first class mail, postage prepaid to the Service List.



Douglas L. Patch

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