

**THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION**

Public Service Company of New Hampshire
2010 Energy Service Charge

Docket No. DE 09-180

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S OBJECTION TO
TRANSCANADA'S MOTION TO COMPEL**

Public Service Company of New Hampshire ("PSNH") hereby objects to the Motion to Compel filed by TransCanada Power Marketing, Ltd. ("TransCanada") on November 12, 2009. In support of its Objection, PSNH says the following:

1. PSNH's Objection to TransCanada's Data Request.

PSNH objected to TransCanada's Request Number 13:

Question:

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.

PSNH objected to this question on two grounds (a) that the information sought is neither relevant nor material to the proceeding and would not lead to evidence admissible in this proceeding; and, (b) that the information sought by TransCanada (a participant in the competitive market) is confidential business information which if revealed, would cause significant competitive harm to the company and its customers.

**2. The Information Sought Is Neither Relevant Nor Material To The
Proceeding And Would Not Lead To Evidence Admissible In This
Proceeding**

Even assuming that this was a proper data request from a party entitled to this information (which it is not), the information requested is neither relevant to the proceeding nor reasonably calculated to lead to the discovery of admissible evidence (notwithstanding TransCanada's cursory, conclusory, and unsupported assertion that the request is "clearly" relevant, despite the limited reasons it set forth for intervenor status, and the limitations placed on the grant of such status by the Commission, as more fully discussed below).

This proceeding has been noticed to approve an energy service rate based upon estimated costs for supplying Default Energy Service in 2010. The Commission has explored and examined how PSNH procures the supplemental power in several reconciliation proceedings, after the fact, to answer the question, "Did PSNH indeed procure the supplemental power in a reasonable and prudent way?" Unlike those reconciliation proceedings, the instant estimating proceeding has been established to set an ES rate for the following year. Thus, TransCanada's assertion in its Motion to Compel that the subject of this proceeding is "whether the costs of the power that [PSNH] purchases to meet default service customer demand are reasonable and prudent." is just plain wrong.

The information sought by the request in question would serve no purpose in this estimating proceeding. The information sought would only provide the competitively sensitive details of how PSNH purchases supplemental power to meet the needs of its customers beyond the loads supplied by its generating assets. These procedures result in the power purchases which form the basis of the supplemental power portion of the ES rate.

The written procedures will not prove that a competitively bid supply would have produced a better result or that substituting a projection of hourly ISO New England market prices are a better projection of the supplemental power prices that should be included in the estimate of the 2010. The information would be duplicative of evidence already submitted to the Commission.¹

¹ The process has been described through the testimony of PSNH witness Mr. Richard Labrecque in reconciliation proceedings. Liberty Consulting reviews these power purchase efforts on behalf of the

3. The Information Sought Is Confidential Business Information Which If Revealed, Would Cause Significant Competitive Harm To The Company And Its Customers.

Instructions or guidelines as to how PSNH personnel make purchases are highly sensitive confidential commercial information. As noted above, this information has no material value to the Commission in this estimating proceeding, but its disclosure to competitive or alternative suppliers has serious consequences for PSNH and its customers. Competitive suppliers and those offering alternatives to PSNH energy service such as TransCanada, Freedom, Halifax and the members of NEPGA would benefit greatly by learning how PSNH procures its supplemental supply.²

TransCanada should never have made the request contained in its Request Number 13, and upon learning that the information sought was confidential, should not have filed its motion to compel. The scope of an intervening party's participation may be subject to limits and conditions imposed by the Commission, RSA 541-A:32, III. The Commission in this case so limited the intervention of TransCanada and the other competitive and alternative suppliers: "...the Commission has determined to grant the motions to intervene of TransCanada, Freedom, Halifax and NEPGA subject to limitations on access to confidential information." Secretarial Letter, November 4, 2009; *see also*, PSNH's Response to Freedom/Halifax Letter and Memorandum re: Intervention. Counsel for TransCanada agreed to adhere to any Commission orders regarding confidentiality. *See*, Appearance, October 16, 2009. In seeking confidential materials, TransCanada has sought information to which it is not entitled under the Commission's grant of limited intervention.

Commission Staff. The supplemental power purchasing process also is explained in PSNH's currently approved Least Cost Integrated Resource Plan. Docket DE 07-108, Exh. 2, p 91 *et seq.*

² Freedom/Halifax argue that each intervenor is entitled to receive all information including confidential competitive information. *See*, Freedom/Halifax Letter and Memorandum dated November 11, 2009.

In light of the condition limiting access to confidential information placed on TransCanada's participation as an intervenor in this proceeding by the Commission, its suggestion that execution of a non-disclosure agreement would fix any confidentiality problem must be rejected out of hand. TransCanada itself, and other participants in the competitive market are the very parties to whom the confidential information requested must not be disclosed. A non-disclosure agreement under which the confidential information would in fact be disclosed to these very entities has no value whatsoever.

TransCanada's Motion to Compel cited interests beyond the interests it proposed for its intervention. At the prehearing conference, the hearing examiner properly asked for clarification of what substantial interests TransCanada had in this proceeding. Transcript, October 19, 2009 at 5. Counsel offered the issues of migration and the restructuring principles of RSA 374-F as the bases for its intervention. *Id.* at 6-8. The Motion to Compel, however, expands the areas of TransCanada's intervention and cites the Commission's role in determining the estimated rate under RSA 369-B:3 IV(b)(1)(A). Motion to Compel at ¶ 4 and ¶ 5. It is the Commission's role to determine what the actual, prudent and reasonable ES rate should be. The Office of Consumer Advocate and the Commission Staff protect the interests of PSNH's customers. TransCanada represents no consumers which will ultimately take energy service from PSNH; it competes against whatever rate the Commission approves for energy service. TransCanada has no legitimate interest in nor did it represent to the Commission that it had a substantial interest in the actual, prudent or reasonable energy service rate.

4. Conclusion.

PSNH incorporates herein its arguments contained in its Response to Freedom/Halifax Letter and Memorandum re: Intervention. Every time the Commission grants intervention to a competitive or alternative supplier in a PSNH proceeding there are issues related to discovery and the scope of that intervention.

In this proceeding, the hearings examiner rightfully inquired as to the specific rights or substantial interests each intervenor actually has in this proceeding.³ Intervenors have since filed data requests which are beyond the scope of this proceeding, beyond the scope of their intervention as each had explained to the bench at the prehearing conference, and beyond the limitation that was properly imposed by the Commission under RSA 541-A:32, III(a).

PSNH conceded at the prehearing conference that the issue of migration was a proper issue for discovery and inquiry as long as confidential information was not shared with the competitive and alternative suppliers. Transcript at 9 and 11. PSNH's reasonableness has been met with objectionable data requests and motions to compel. PSNH can only conclude that the intervention of any competitive or alternative supplier in the future will lead to disruption of the orderly conduct of these proceedings. RSA 541-A:32.

WHEREFORE, PSNH respectfully requests the Commission to deny the Motion to Compel filed by TransCanada Marketing Ltd., and order such further relief as may be just and equitable.

Respectfully submitted,
Public Service Company of New Hampshire

November 17 2009
Date

By: Gerald M. Eaton
Gerald M. Eaton
Senior Counsel
780 North Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330
(603) 634-2961

³ Commissioner Ignatius, sitting as hearing examiner, indicated, "And, I will tell you straight out I find lacking some connection between what those three companies do and why their interests are affected by this particular proceeding." Transcript at 5.

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached Objection to TransCanada's Motion to Compel to be served pursuant to N.H. Code Admin. Rule Puc §203.11.

November 17 2009
Date

Gerald M. Eaton
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