

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

DE 11-250

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Investigation of Scrubber Costs and Cost Recovery

Exceptions to Hearing Examiner's Rulings during Deposition

NOW COMES TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (together, "TransCanada") and respectfully takes exception to two rulings made by the Hearings Examiner during the September 16, 2013 deposition of Gary Long on objections to questions as further described in the Hearing Examiner's Report dated October 8, 2013 ("the Report"). In support of these exceptions TransCanada states the following:

1. In accordance with Commission Order No. 25,566 in this docket Hearing Examiner F. Anne Ross attended the September 16, 2013 deposition to address disputes regarding the scope of questioning and whether to compel an answer to questions of Mr. Long. The Report sets forth the rulings that Ms. Ross made. By letter of the Executive Director dated September 26, 2013 the Commission approved a schedule under which the Parties have until October 18, 2013 to submit any pleadings taking exception to Attorney Ross' rulings.

2. Ruling #5 as described in the Report was to sustain the objection to the following question:

So, I mean, I just find that hard to believe, given all the times that I know PSNH has gone to the legislature otherwise. You're telling me under no circumstances would you have approached the legislature to change the mandate and the law, regardless of what the cost had risen to. Is that what you're saying ?

3. Ruling #7 as described in the Report was to sustain the objection to the following question:

I'm talking about before the legislature, the PUC, anybody else, any and all times PSNH has made any efforts to try to change the effect of that provision. Again, it's part of the mandate that says you can only recover from default service customers. Have you made any efforts to try to change that? You suggested that to the legislature. Have you suggested it to the PUC?

4. Both of these questions seek information that falls well within the applicable discovery standard, i.e. "whether the information being sought is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence." *Order Regarding TransCanada's Motions to Compel*, Order. No. 25,445 (Dec. 24, 2012) at 22. They also seek information that is consistent with the Commission's statement in the Order Compelling Deposition, Order 25,566, at 6:

PSNH was only responsible for prudently exercising the management discretion that it had under the law over its continued ownership and operation of Merrimack Station, given the escalating costs of the Scrubber, changes in the marketplace, and any other financial and environmental issues that might have affected the prudence of PSNH's continued ownership and operation.

5. PSNH continues to argue that the scrubber legislation, which the record shows it took credit for "crafting" and "spearheading",¹ and which it actively defended against any effort to further study or change in 2009, was a "mandate". To allow PSNH to fall back on the argument that the scrubber law is a mandate as a response to all questions related to efforts it could have taken as a matter of management discretion, but then to restrict parties to this docket from asking follow up questions that point out what PSNH had available to it as options, including what it did or could have done to change the "mandate", seems overly restrictive and inconsistent with the Commission's discovery standard noted above. Such rulings also unfairly

¹ See DE 08-103, September 2, 2008 letter to the Commission from Gary Long. As one New Hampshire legislator recently noted, PSNH was "complicit" in this "mandate".

and unnecessarily restrict a complete review of the prudent exercise of management discretion PSNH had available to it under the law, a fundamental component of this prudency review.

6. By continuing to rely on an argument that the scrubber law was a “mandate” and publicly blaming the Legislature for making it do this project, PSNH has opened the door to inquiries like the two questions at issue, the answers to which could point out the fallacy and absurdity of its argument that because the scrubber law was a “mandate” PSNH gave no consideration to trying to get the law changed once it became clear that the scale of this investment in a 40 year old plant was going to present enormous risk and be uneconomic for its customers. Clearly one of the options available to PSNH from a management discretion perspective was to fully and accurately alert lawmakers not only to the dramatically escalated cost of the project, but also to the changes in the marketplace and the price of natural gas and what effect that would have on its customers and/or to accept a study of the economics of the project.

7. Whether PSNH made attempts to amend RSA 128-O:18 to allow recovery from all ratepayers rather than just from default service ratepayers is relevant to the issue of management discretion and thus prudency and also relevant to the issue of Mr. Long’s and PSNH’s credibility. If on the one hand PSNH argues that it never considered going to the Legislature to try to change the scrubber law because it was a “mandate”,² yet on the other hand it approached legislators seeking a change in the cost recovery mechanism in the scrubber law

² See for example this exchange in the transcript of the deposition page 45:

Q. And did the Risk and Capital Committee have the authority to say no to the project?

A. No. No, it was a mandate by the state. It wasn't a company decision to make. We — our role was to comply. And in doing that, we needed to raise capital, and doing that we needed to have procurement. We needed to understand the impact. But we were in compliance mode, not decision mode.

See also page 46, lines 15-17: “But management had no discretion on this one. It was already mandated.”

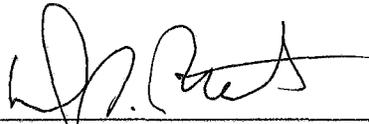
which limits recovery of scrubber costs to default service customers, its position would be inconsistent, and its credibility in question. It would also clearly point out that PSNH management not only understood that one of the options available to it was to seek a change in the scrubber law, but actually took steps in that direction. Even if it was a “mandate” (an argument that requires that you ignore the variance provision in the scrubber law and the other options available to PSNH under other laws which the Commission has noted in its orders in this docket), like any other law it could be amended or repealed. Escalating costs, changes in the marketplace, and financial and environmental issues that affected the prudence of PSNH’s continued ownership and operation had dramatically undermined the “careful, thoughtful balancing of cost, benefits, and technological feasibility” anticipated in the scrubber law passed in 2006. *See* RSA 125-O:11, VIII.

8. TransCanada submits that because the responses to these questions could contain information that is relevant to the issue of the prudent exercise of management discretion and are therefore reasonably calculated to lead to the discovery of admissible evidence in this proceeding the Commission should direct PSNH to respond to the questions or, in the alternative, make it clear that the parties are free to submit evidence and make inquiries about these issues during the remainder of the proceeding.

WHEREFORE, TransCanada respectfully requests that this honorable Commission:

- A. Direct Mr. Long to respond to the two questions noted above;
- B. Allow parties to the docket to submit evidence and make inquiries about these issues during the remainder of the proceeding; and
- C. Grant such further relief as it deems appropriate.

Respectfully submitted,

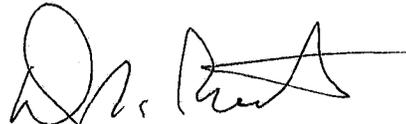


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Certificate of Service

I hereby certify that on this 18th day of October, 2013 a copy of the foregoing motion was sent by electronic mail to the Service List.



Douglas L. Patch

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