

Orr&Reno

NHPUC 6 JUN 21 PM 3:09

Douglas L. Patch
dpatch@orr-reno.com
Direct Dial 603.223.9161
Direct Fax 603.223.9061
Admitted in NH and MA

June 6, 2014

VIA HAND DELIVERY AND VIA EMAIL

Debra A. Howland, Executive Director & Secretary
New Hampshire Public Utilities Commission
21 South Fruit St., Suite 10
Concord, NH 03301-2429

**Re: DE 11-250, Public Service Company of New Hampshire Investigation of
Scrubber Costs and Cost Recovery – Response to Order No. 25,671**

Dear Ms. Howland:

TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (“TransCanada”), an intervenor in this docket, hereby submits this letter in response to Order No. 25,671 in which the Commission denied TransCanada’s Motion to Reconsider the Commission’s decision to require responses to certain discovery requests. In that Order, the Commission directed TransCanada to provide supplemental responses to four data requests propounded by Public Service Company of New Hampshire (“PSNH”), including documents from TransCanada affiliates that are not parties to the docket, by June 6, 2014. Attached to this letter are the supplemental responses that TransCanada is providing in response to these data requests.

As TransCanada indicated in its Motion for Reconsideration and/or Clarification of Order No. 25,671, it will not produce non-public forecast information held by non-party affiliates. TransCanada does not take this position lightly or out of any disrespect for the Commission or the process. Rather, this position is taken to protect the financial and competitive interests of TransCanada’s affiliates and its parent company’s business interests.

It is also taken based on the fact that the burdens associated with the proper due diligence of satisfying the breadth and depth of the discovery request are not justified considering the issue in this case. The case is about the prudence of PSNH’s investment in a scrubber, what PSNH knew at the time it made various investment decisions and the rate burden that will be placed on PSNH’s customers. The Commission will now move forward with its proceedings based on the information it has received and what it thinks is in the best interest of ratepayers. TransCanada does not intend to continue to litigate discovery disputes related to its affiliated businesses. The discovery dispute has gone on too long and the Commission needs to move forward as it deems appropriate.

With respect to the confidentiality of third party non-affiliate forecasts, while the Commission's Order said that the information at issue "is not likely sensitive given its age" TransCanada and the non-affiliated third parties respectfully disagree. The *methodology* that TransCanada and other private party forecasters use to develop energy market forecasts is highly sensitive commercial information that, if disclosed would harm TransCanada and the private party forecasters financially. The forecasting *methodology* is intellectual property and neither TransCanada nor private party forecasters agree to provide such information in response to the request.

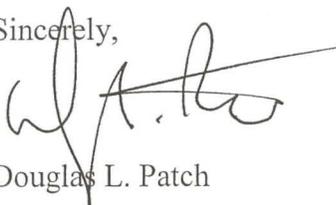
Providing confidential responses of the methodology under normal discovery practices (*i.e.*, subject to a protective order) is extremely risky and therefore not a feasible option, given that if the information were disclosed to and used by competitors, it is unlikely that the Commission could fashion any remedies that could adequately compensate for the financial damages resulting from the disclosure. Further, this assumes the party harmed is even aware of or able to prove the use of its methodology by a competitor.

The Commission now has to determine how it wants to proceed with the case. Nevertheless, it should be noted that PSNH propounded over 425 data requests to TransCanada, *i.e.*, over four times what TransCanada propounded to PSNH, and over seventeen times the number allowed by Superior Court rules. TransCanada has responded to the vast majority of those requests, and worked very hard to limit discovery disputes with PSNH.

TransCanada has contributed much to this docket by providing information and testimony that bears on the central prudence issue in this docket. Mr. Hachey expended considerable time and effort on developing his prefiled testimony, and did not rely in any way on the affiliate documents sought by PSNH. In addition, TransCanada believes it still has much to contribute through the remainder of this docket. The resolution of the issues at stake in this docket will have significant ramifications for New Hampshire's electricity customers. TransCanada respectfully requests that the Commission take affirmative steps to halt PSNH's continuing heavy handed and burdensome tactics intended to frustrate and dissuade intervenor participation in this and other dockets.

Thank you for your attention to this matter. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "D. L. Patch", written over a horizontal line.

Douglas L. Patch