

**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

**Second Motion to Compel Public Service Company of New Hampshire
to Respond to Data Requests**

NOW COMES TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (together, "TransCanada"), an intervenor in this docket, and moves this Honorable Commission, pursuant to Admin. Rule Puc 203.09(i), to compel Public Service Company of New Hampshire ("PSNH") to respond to certain data requests TransCanada made of PSNH, the objections to which were provided on August 30, 2012, as described in more detail below. In support of this Motion TransCanada states as follows:

1. The Commission is addressing other issues raised by TransCanada's first Motion to Compel filed in this docket on July 16, 2012. In the meantime PSNH has objected to certain other data requests propounded by TransCanada in this docket that raise similar issues. In light of the pending discovery issues which the Commission is in the process of deciding TransCanada thought it important to bring these new objections to the Commission's attention so that they could if possible be addressed in conjunction with the other discovery issues.

2. In accordance with the procedural schedule in this docket on August 24, 2012 TransCanada submitted data requests to PSNH. On August 30, 2012 PSNH objected to some of these data requests. A copy of the data requests and the objections for TC 3-16, 17, 19, 20, 21, 22 and 23 are included as Attachment A to this Motion.

3. TransCanada's data requests seek information about other regulatory requirements that could have imposed or will impose additional costs on Merrimack Station. In its 2008 order in DE 08-103 the Commission said: "RSA 125-O:17 does, however, provide a basis for the Commission to consider, in the context of a later prudence review, arguments as to whether PSNH had been prudent in proceeding with installation of scrubber technology in light of increased cost estimates and additional costs from other reasonably foreseeable regulatory requirements..." [Emphasis added.] See *Re Investigation of PSNH's Installation of Scrubber Technology at Merrimack Station*, 93 NH PUC 564, 572 (2008). In light of this language from the Commission's 2008 order TransCanada believes it appropriate and necessary to request information from PSNH about other regulatory requirements of which it was or is aware. As the Commission can see from the attached responses PSNH objects to these questions.

4. As noted in the prior Motion to Compel the standard for discovery in Commission proceedings is broad and extends to information that is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. *Re Investigation into Whether Certain Calls are Local*, 86 NH PUC 167, 168 (2001). The Commission will typically allow "wide-ranging discovery" and will deny discovery requests only when it "can perceive of no circumstance in which the requested data would be relevant." *Re Lower Bartlett Water Precinct*, 85 NH PUC 371, 372 (2000). A

party in a legal proceeding in New Hampshire is entitled to “be fully informed and have access to all evidence favorable to his side of the issue. This is true whether the issue is one which has been raised by him or by his opponent, and whether the evidence is in the possession of his opponent or someone else.” *Scontsas v. Citizens Insurance Co.*, 109 N.H. 386, 388 (1969).

5. The basis for PSNH’s objection to these data requests is that the requested information is not relevant to the prudence of PSNH’s compliance with the mandate contained in the Mercury Reduction law and that they are not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. TransCanada submits that PSNH’s objection is directly contrary to what the Commission noted in the 2008 order and for this reason and other reasons TransCanada included in its first Motion to Compel and the legal brief submitted on August 28, 2012 TransCanada requests that the Commission compel PSNH to respond to these data requests.

6. Counsel for TransCanada has made a good faith effort to resolve these discovery issues informally with PSNH as required by Puc 203.09(i)(4), to no avail. Counsel for TransCanada has contacted the other parties to this docket and they take the following positions on this Motion: Staff takes no position on this Motion; the Office of Consumer Advocate, the Conservation Law Foundation and the Sierra Club support this Motion.

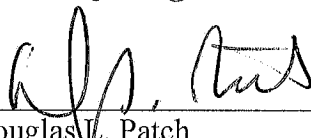
WHEREFORE, TransCanada respectfully requests that this honorable Commission:

A. Compel PSNH to respond to data requests TC 3-16, 3-17, 3-19, 3-20, 3-21, 3-22 and 3-23; and

B. Grant such further relief as it deems appropriate.

Respectfully submitted,

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Douglas L. Patch

September 11, 2012

Certificate of Service

I hereby certify that on this 11th day of September, 2012 a copy of the foregoing motion was sent by electronic mail to the Service List.



Douglas L. Patch

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