

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire

Docket DE 11-250

Objection
of
Public Service Company of New Hampshire
to
TransCanada's Second Motion to Compel

Pursuant to N.H. Code Admin. Rules Puc § 203.07(e), Public Service Company of New Hampshire ("PSNH" or the "Company") hereby objects to TransCanada's Second Motion to Compel dated September 11, 2012. TransCanada has identified as in contention the following questions in its third set of data requests: 6, 17, 19, 20, 21, 22 and 23.

In support of this Objection, PSNH states as follows:

1. The questions in dispute, and their respective objections, raise issues that are substantially identical to those involved in TransCanada's initial Motion to Compel dated July 16, 2012.
2. Rather than repeat the matters and arguments set forth in its July 26, 2012, Objection to that initial Motion to Compel, PSNH respectfully requests that the arguments therein be incorporated into and considered as part of this Objection.

3. In Order No. 25,398 dated August 7, 2012, the Commission called for the filing of legal briefs concerning “the proper interpretation of RSA 125-O:10, RSA 125-O:17 and the cost recovery provisions of RSA 125-O:18, and how these statutes relate to one another, to the application of the standard for discovery of evidence, and to relevance.” In that Order, the Commission also held in abeyance rulings on TransCanada’s data requests identified in its first Motion to Compel related to the variance issues pending ruling after review of the legal briefs.

4. In Order No. 25,398, the Commission stated that “the resolution of these issues may be important in minimizing further discovery disputes involving similar questions and responses and in helping refine the scope of the docket for purposes of pre-filed testimony and hearing testimony.” All of the questions in dispute as part of TransCanada’s Second Motion to Compel are such “similar questions,” and the resolution of this discovery dispute should be subject to the Commission’s process established in Order No. 25,398.

5. TransCanada’s additional questions and Second Motion to Compel further illustrate the “Pandora’s Box” that Scrubber opponents wish to open. TransCanada argues that its questions which it asserts “seek information about other regulatory requirements that could have imposed or will impose additional costs on Merrimack Station” are relevant to the prudence of PSNH’s actions to comply with the 2006 mercury reduction law. The range of issues that TransCanada alleges are relevant to this proceeding is unending, ever-changing, and all too often speculative and hypothetical in nature. In fact, if RSA 125-O:17 were to be interpreted as TransCanada urges, that variance provision would arguably have provided PSNH with limitless opportunities to avoid compliance with the clear legislative mandate of the mercury emissions law - - a magic

loophole in the law that essentially would have rendered the public interest findings and non-severable provisions of the mercury emissions reduction law into nothing more than an aspirational goal that the Legislature hoped PSNH could achieve at some unidentified time in the future when fuel costs no longer fluctuated and the environmental law landscape was static. Such a peculiar interpretation of the law would have required PSNH to submit a cascade of applications to the Department of Environmental Services seeking a variance every time that there was a change in project cost; air emissions laws; air emissions regulations; air permits awarded to PSNH or any other generating facility in the United States; court decisions impacting air emissions regulation; water discharge laws; water discharge regulations; water permits awarded to PSNH or any other generating facility in the United States; court decisions impacting water discharge regulations; proposed laws or regulations governing air, water or waste; the possibility or probability that a regulatory requirement might be imposed regarding air, water or waste; changes in the cost of energy on the competitive market; changes in costs of coal, oil, gas, or other generating fuels; changes in demand for electricity; changes in customers using PSNH default energy service; and on, and on, and on....

6. The TransCanada data request questions objected to by PSNH clearly demonstrate this broad, ever-changing, and never-ending collection issues that TransCanada asserts are relevant to this prudence proceeding, based on their position that the law is not really the law since the variance provision provides a loophole that permitted PSNH to avoid compliance whenever energy costs fluctuated, or a new law, regulation, permit, or court decision was issued or seemed likely to occur. Their questions ask, *inter alia*:

a. TC 1-1: Please provide copies of all economic analyses relied on by PSNH in its decision to install a flue gas scrubber at Merrimack Station.

b. TC 1-2: Please provide all fuel price forecasts available to PSNH at the time of its initial decision to construct the flue gas scrubber at Merrimack Station.

c. TC 1-3: Please identify which of the fuel forecasts in question 2, above, were relied on by PSNH in its decision to install a flue gas scrubber at Merrimack Station.

d. TC 1-4: Please provide all fuel price forecasts available to PSNH at the time of development of Gary A. Long's letter dated September 2, 2008 to Ms. Debra A. Howland Re: Docket No. DE 08-103.

e. TC 1-12: How did PSNH account for the probability that Merrimack Station could be required to implement closed cycle cooling at the station in its analyses of the economics of installing a flue gas scrubber, given consideration of regulatory experiences at other regional and national energy generation facilities?

f. TC 3-16: provide:

i. other proposed or adopted environmental regulatory requirements (other than the requirements in RSA 125-O) for Merrimack Station or other existing, coal-fired power plants from the state or federal government during the period of 2006 through 2009;

ii. internal assessments, discussions with federal or state regulators or other internal or third party communications with respect to Clean Water Act, Clean Air Act, Resource Conservation and Recovery Act and any applicable air, water or waste regulations;

iii. estimated costs for compliance with any proposed or anticipated requirements that would be applicable to Merrimack Station;

g. TC 3-17:

i. When did PSNH first become aware that the U.S.E.P.A. was contemplating a finding that closed cycle cooling water technology would be considered "best technology available" under the Clean Water Act for purposes of Merrimack Station compliance with thermal discharge or other water-related standards?

ii. Was PSNH aware of the status of Phase II rules adopted by U.S.E.P.A. in 2004 regarding compliance with Clean Water Act requirements related to entrainment and thermal discharges?

iii. PSNH's understanding in 2008 with regard to the potential requirement that Merrimack Station would be required to install closed cycle cooling water technology?

iv. All discussions between PSNH or its agents and U.S.E.P.A. officials regarding the agency's review of PSNH's NPDES renewal application at any time between 2006 and issuance of the draft NPDES permit.

v. whether and when PSNH was made aware of the U.S.E.P.A. proposed finding on closed cycle cooling water technology at the Brayton Point coal-fired power plant.

- vi. whether and when PSNH prepared or submitted to any agency the estimated costs for installation of closed cycle cooling water technology at Merrimack Station and provide copies of all such estimates.
 - vii. any and all documentation in the possession of PSNH or its agents that explains the responses to these requests, including all notes of discussions with U.S.E.P.A. officials and internal cost estimates.
- h. TC 3-19:
- i. Was any thought given to: (1) retirement of Merrimack Station;
 - ii. Was any thought given to: (2) retirement of Merrimack Station as a coal unit as an option and conversion to natural gas.
- i. TC 3-21: any alternative scenario, technology or cost analyses/estimates were performed between 2006 and present with regard to mercury reduction levels and associated costs that would be required under potential mercury baseline determinations
- j. TC 3-22:
- i. Please identify the means by which PSNH intends to comply with the U.S. E. P. A. final rule on "National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units" published in the Federal Register on February 16, 2012 at 77 Fed. Reg. 9304;
 - ii. whether such compliance would require any additional technologies, equipment, capital or operating costs , or any additional costs whatsoever, for Merrimack Station
- k. TC 3-23: Has PSNH developed a compliance strategy with regard to state and federal mercury reduction requirements.
- l. TC 4-2: Is PSNH aware of any studies of the long term effects of sulfur/mercury in wallboard that have been done? If so, please provide copies of such studies.
- m. TC 4-3: What is PSNH's understanding of what happens to wallboard that is no longer useful? Are there any local, state or federal laws or regulations that govern how to dispose of wallboard?
- n. TC 4-4: Have any studies been done about the environmental or health effects of wallboard that contains mercury and/or sulfur ending up in land fills?

o. TC 4-5: Is PSNH aware of any studies of the long term environmental or health effects of sulfur/mercury that end up in public bodies of water ? If so, please provide copies of such studies.

p. TC 4-23: Reference the PSNH response to TC 2-4 in this docket, as of this point in time how much does PSNH understand that the scrubber project will mitigate SO2 costs? Please provide any studies, reports or other documentation that PSNH is relying upon for this response.

7. The issues TransCanada inquires about in these questions span the time period from before the mercury reduction law was enacted to future proposed or anticipated regulatory actions, and all times in-between. They ask for fuel price forecasts “at the time of its initial decision to construct the flue gas scrubber” and “at the time of development of Gary A. Long's letter dated September 2, 2008 to Ms. Debra A. Howland Re: Docket No. DE 08-103.” No doubt, had the Scrubber Project been delayed for any reason (such as awaiting DES decisions on the myriad variance requests which TransCanada seemingly argues PSNH should have made), TransCanada would deem additional fuel price forecasts also to be relevant. Fuel prices change every day. New environmental permits are continually issued to generating stations across the country. Environmental regulations are always being issued, and often-times struck down by the courts, only to be replaced by new regulations. The economy shrinks and grows. Demand for and supply of electricity changes every minute. TransCanada asserts that every such change – whether historic, real-time, proposed, probable, estimated, forecast, anticipated, or potential -- is relevant to whether PSNH was prudent in proceeding with the mandated installation of scrubber technology.

8. When the Legislature expressly found that, “*It is in the public interest to achieve significant reductions in mercury emissions at the coal-burning electric power plants in the state as soon as possible*” (RSA 125-O:11, I) the intent of the mercury reduction law was set

forth clearly and unambiguously. Given this clear statement of the public interest and the unequivocal statutory mandate to proceed expeditiously, there can be no doubt that the Legislature did not anticipate, nor intend to provide an opportunity for, a continuous series of Scrubber Project delays while PSNH filed multiple, cascading variance requests with DES in order to protect itself from the very imprudence claims asserted by the parties to this proceeding!

9. Indeed, the Legislative history of the mercury scrubber law demonstrates that the prescriptive nature of the law's scrubber mandate was to *avoid such delays*:

It's also been raised, why are we being prescriptive? Why are we in this regular ... in this law to PSNH to put in a scrubber? And I have to take personal responsibility for that; I advocated for that myself. Why would I do that? Everybody, including myself I think agrees that *we want to see mercury reductions, a high level of mercury reductions, sooner than later*. We know that the installation of scrubbers, which have a wonderful benefit of SO₂ reductions, also reduce mercury at a high percentage. That is today the best technology, especially taking into account the multi-pollutant benefits that we know of. *What we wanted to avoid is extra time* being given, another year, two years, of a selection process, what's the best technology, the owner's having to go to PUC to convince them that at this is the best technology, and then perhaps having some other company come in and say, "Well, I had this new alchemy and I can do something even better." That's all fine and dandy, *but what we're concerned about is we don't want to have this as a method where we're constantly delaying the installation*. By calling out scrubber technology in the bill, *we're signaling PSNH from the word go to start to engineer, design and build scrubber technology right away*. The bill has in it, within one year of passage of the bill, they are required to have all their applications in to us, which means there's a lot of engineering work they have to do. This is starting ... this is in the ground writing for the plan, and this is why we did that.

April 11, 2006, testimony of Mr. Robert Scott, Director, Air Resource Division of the New Hampshire Department of Environmental Services, before the Senate Committee on Energy and Economic Development, concerning HB 1673-FN "relative to the reduction of mercury emissions." (Emphases added.)

10. In light of the express public interest findings of the Legislature, the mercury reduction law's legislative history, and the direct legal mandate for PSNH to install scrubber technology at

Merrimack Station as soon as possible, the information sought by the questions in dispute have no relevance whatsoever to the prudence of PSNH's actions to comply with the mercury reduction law. There is no need for the Commission to entertain this endless stream of issues to determine "whether the costs of the Scrubber Project were prudently incurred consistent with the requirements of RSA 125-O:11 et seq.," which is the purpose of this proceeding set forth in the December 1, 2011, "Order of Notice" for this docket.

11. It should also be noted that TransCanada questions 3-20 and 3-21 are not amenable to responses at this time, regardless of the rulings on PSNH's objections thereto. Both questions are erroneously premised on "the recent ruling by the NH Air Resources Council affirming the New Hampshire Department of Environmental Services determination of the baseline mercury emissions pursuant to RSA 125-O:14, II and assuming that this ruling remains in effect pending or following any appeal... ." The matter referred to in these questions has not been decided by the Air Resources Council; PSNH's appeal docketed as ARC Docket No. 11-10 is still pending before the Air Resources Council. PSNH informed counsel of TransCanada of the status of ARC Docket No. 11-10 during the good faith effort to resolve these discovery issues referred to in the Motion to Compel.

WHEREFORE, PSNH objects to TransCanada's Second Motion to Compel.

For the reasons expressed herein, PSNH respectfully requests that the Commission:

- A. Deny TransCanada's Motion to Compel; and
- B. Grant such other and further relief as justice may require.

Respectfully submitted this 13th day of September, 2012.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

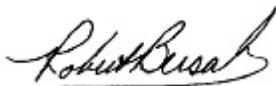


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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2012, I served an electronic copy of this filing with each person identified on the Commission's service list for this docket pursuant to Rule Puc 203.02(a).



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