

**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

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

NOW COMES TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (together, “TransCanada” or “the Companies”), intervenor in this docket, pursuant to Admin. Rule Puc 203.07(e) and objects to Public Service Company of New Hampshire’s (“PSNH”) Motion to Compel TransCanada to Respond to Data Requests (“Motion”) filed with the Commission in this docket on April 18, 2014. In support of this Objection TransCanada states as follows:

As PSNH noted in the Motion counsel for TransCanada and PSNH met and resolved many of the discovery matters still in dispute as directed by the Commission in Order No. 25,646. Of the remaining seven data requests that have not been resolved to PSNH’s satisfaction, six are data requests to which TransCanada has responded with regard to the Companies that are parties to this docket.¹ PSNH now seeks supplemental responses to these data requests that would include information in the possession of affiliated TransCanada companies that are not parties to this docket and that do not

¹ 75c is the one exception. At the meeting on April 14 counsel for PSNH said they no longer needed a response to any of the subquestions in 75 other than d. See the response to question 75 included in Attachment C to the PSNH Motion. Nonetheless, PSNH’s Motion asks for a response to 75c, which TransCanada submits PSNH waived in the discussions to resolve the discovery dispute.

possess information relevant to this docket. Moreover, PSNH is asking for information that Mr. Hachey did not review, rely upon or consider when preparing his prefiled testimony in this docket. The Companies should not be required to respond to unreasonable demands for information that is either publicly available or that is in the possession of other entities not a party to this docket and that was never available to Mr. Hachey, TransCanada Power Marketing Ltd. or TransCanada Hydro Northeast Inc. because of regulated codes of conduct prohibiting such disclosure.

In Order No. 25,646, p. 35, the Commission said: "Discovery is generally limited to 'any party.' Puc 203.09(b)." After citing the TransCanada companies to which it granted intervention in this docket the Commission said: "Only those TransCanada entities are parties to this case and we will not compel TransCanada to answer questions directed at other TransCanada affiliates." Although the Commission indicated PSNH could try to "make a particularized showing" for specific information from non-party affiliates which the Commission would then "consider", the Commission also made it very clear that PSNH would have to show "a substantial need for specific information" from a non-party affiliate, that the information is "necessary to this docket", and that the information would have to be "not otherwise available". TransCanada submits that PSNH has not met the burden of showing that the information it is still seeking meets these requirements.

As TransCanada and others have argued in prior pleadings and as the Commission has noted in prior orders (see for example Order No. 25,565, p.7) the issue in this docket is the prudence of PSNH's actions, whether the investment in the scrubber at Merrimack Station made by PSNH, a regulated electric utility, was prudent in light of the facts and

circumstances known to PSNH. It is PSNH's burden to show that it acted prudently. The scope of the docket is dictated by RSA 125-O:18, which refers to allowing recovery of "all prudent costs of complying with the requirements of this subdivision," and prior Commission orders. This docket is not about information available to non-party TransCanada affiliates in another country or elsewhere in the US, nor is it about decisions that any such affiliates or other companies might have made about other projects.

PSNH's data requests and its Motion to Compel attempt to shift the focus away from where it belongs in this docket, which is whether PSNH "has exhibited inefficiency, improvidence, economic waste, abuse of discretion, or action inimical to the public interest". *Re Public Service Company of New Hampshire*, 81 NH PUC 531, 541 (1996) (citing *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 708 (1985)); *see also Appeal of Easton*, 125 N.H. 205, 215 (1984); *Re Public Service Company of New Hampshire*, 87 NH PUC 876, 886 (2002). It is "the Commission's responsibility and obligation under the law ...to determine whether PSNH conducted itself with the level of care expected of highly trained specialists..." *Public Service Company of New Hampshire*, 87 NH PUC 876, 886 (2002).

The supplemental responses that PSNH is now seeking attempt to change the focus of this docket from its own actions; specifically, what it knew when it decided to proceed with the scrubber investment despite huge increases in the estimates to construct the scrubber and significant changes in gas prices and what it told its Board of Trustees about the needed spread between coal and gas prices to make the project economic. It is about whether PSNH ignored the forecasts it actually did have and had available to it and went forward with the project despite forecasts that showed that the project would be

uneconomic. PSNH is trying to shift that focus to unrelated and irrelevant actions and knowledge of others that are not even parties to this case.

As noted above, TransCanada has responded to all of the requests at issue for the Companies that are parties to the docket. What PSNH is still seeking is either publicly available information, which some of its questions indicate that it already has (see question 75 laid out in detail in footnote 2) or confidential information in the possession of non-party TransCanada affiliates, information that Mr. Hachey had no access to and which he never reviewed, considered or relied upon. PSNH is obviously asking TransCanada to provide information that it hopes will in some way support PSNH's actions or contradict Mr. Hachey's testimony. But the question the Commission has to ask itself is even if there were such information how would information available to non-party TransCanada affiliates that neither Mr. Hachey nor PSNH had access to help the Commission decide whether PSNH actions were prudent in light of the information it actually did have? Assume that there is information that either supports or rebuts arguments regarding the prudence of PSNH's actions; would such information in any way help the Commission decide whether PSNH was prudent considering PSNH either did not have the information or rely on it when it moved forward with the scrubber investment?

The information PSNH is seeking is not relevant to the issues in this docket. Mr. Hachey has already provided all of the information that he reviewed, relied upon or considered in preparing his prefiled testimony. Mr. Hachey made a concerted effort in preparing his testimony to look only at the information available to PSNH, both the information that PSNH cited and other publicly available and relevant information, and to

limit his review to this information. The reason that he limited his review in this way was based on his understanding of the scope of the Commission's review in this docket. As he said in his testimony, his understanding, based on prior Commission orders, was that it would limit the review to "what is known or could reasonably have been known at the time of the conduct (Order No. 25,565, p.20)." Hachey prefiled testimony p.2, lines 20-21. He therefore never reviewed, considered or relied upon any of the information that PSNH is now seeking. Information in the possession of non-party affiliates of TransCanada during this time frame is therefore clearly not relevant to either his testimony or this docket.

There is no reason to require the production of any further information. As a matter of public policy granting PSNH's motion would risk having a chilling effect on future intervenors becoming involved in PUC dockets. Granting PSNH's Motion would also significantly expand the scope of the docket into investments by Canadian companies or companies in other jurisdictions in other unrelated projects and into predictions, estimates and forecasts made by those companies. Neither of these outcomes are desirable, necessary or appropriate.

PSNH is really asking TransCanada non-party affiliates to help it prepare cross examination of Mr. Hachey. It is not seeking "information" that is relevant to this docket – it is seeking support for arguments that it wants to make about Mr. Hachey and his testimony. For example in Request No. 75c (which PSNH arguably waived the right to include in this Motion for reasons noted above) PSNH is trying to find out when non-party affiliates of TransCanada acknowledged the impact of Marcellus gas on gas prices.

The prelude to question 75² is a long discourse between a Credit Suisse analyst and a TransCanada official about Marcellus shale gas. Based on the question as presented by PSNH, PSNH already has information from the public domain pertaining to when TransCanada non-party affiliates had information about Marcellus. In its Order, the Commission stated that requests for such information had to be "not otherwise available". This request clearly does not meet that requirement. Not only is PSNH seeking to get around the general rule that the Commission articulated in the Order that it would not compel responses to questions directed at non-party affiliates, but PSNH can not make the requisite particularized showing about the information it is seeking. In addition, this question is designed to seek an admission from TransCanada, which the Commission stated very clearly is not an acceptable form of discovery. See Order No. 25,646 at 6-7

² During the "Q1 2009 TransCanada Corporation Earnings Conference Call," the following discourse occurred:

OPERATOR: Thank you. The next question is from Andrew Kuske from Credit Suisse. Please go ahead.

ANDREW KUSKE, ANALYST, CREDIT SUISSE: Thank you. Good afternoon. Hal, if you could just give us some commentary on your thoughts on the value of long haul pipelines? And in particular, when you start to think about some of the shale plays, and things like the Marcellus and the Utica that are close to essentially big demand centers. And what does that mean for the longer term viability of pipelines like TransCo and really things heading up from the Gulf into those regions?

HAL KVISLE: I would say, we don't know, at this point, How aggressively people will develop the Marcellus, how sustainable the production is, what kind of decline rates will occur? Emphatically, we don't know what kind of local opposition people are going to run into as they try to get drilling locations. I'm not trying to be pessimistic on it but these are some of the things that we have to see unfold over time.

ANDREW KUSKE: Now, if you see very aggressive development of the shale plays in the US and we do see some of the higher end numbers like the 5 B's out of the Marcellus actually come to fruition. In the North American context, what are your thoughts on what does that mean for plays like Horn River and Monteny? Do you see that essentially wind up being -- since it is the end of the pipe in a North American context, essentially not being developed or the base is blowing our pretty wide from an Alberta market perspective?

HAL KVISLE: I've looked back over the last 15 years and if people --there have been many interesting new sources of gas come along. That at the time they come along, people proclaim that they're going to change the world. And they get pretty significant, some of them, but in the grand scheme of things, they're just one more source of supply.

(“A request to admit a clearly disputed fact is inappropriate”). As the Commission noted in the Order, data requests are a vehicle for developing factual information, “not the time to argue policy or advocate for the final result”. Order at 3.

Taking each one of the other questions at issue separately, Question 23 does not even include a time frame – it seeks any information any non-party affiliate might have about cost estimates for scrubber technology. It is far too broad and vague and pertains to information from non-party affiliates. What is relevant here is the cost information specific to Merrimack Station, not cost information about other scrubber projects that might have been available at some unspecified point in time but evidently not available to PSNH and not relied upon by PSNH. The Commission should deny this request.

Question 34a asks for all fuel price forecasts in the possession of non-party affiliates over a seven year period. It is extremely broad and burdensome and would not provide information relevant to this docket. It is seeking information beyond the scope of this docket, some of which includes proprietary and confidential forecasts that were purchased from private sources. Mr. Hachey answered this question in so far as the party affiliates are concerned and specified all of the forecasts that he reviewed in preparing his testimony. PSNH nonetheless seeks information about any other assumptions that might have been used in other forecasts by companies not a party to this docket that Mr. Hachey did not review, rely upon or consider in his testimony and which PSNH did not consider in its decision to proceed with the scrubber project. PSNH has failed to show the relevance of this information and has certainly failed to make a particularized showing of a substantial need for this information.

Similarly, with question 52 Mr. Hachey responded for the affiliates that are parties to the case about the forward market for natural gas delivered to New England. Although it is unlikely that TransCanada non-party affiliates located in Canada and other US markets have relevant New England natural gas forecasts, what difference does it or should it make to this proceeding if non-party affiliates might have other information about the New England forward market for natural gas that Mr. Hachey never looked at and PSNH did not consider?

In question 74 PSNH is seeking information about studies or statements TransCanada may have made on the effects of horizontal drilling and hydraulic fracturing on future gas supply prices. PSNH already has such statements – see the prelude to question 75 noted above where it quotes from TransCanada officials. PSNH apparently wants TransCanada to do an exhaustive search for any other publicly available statements while it already has material it can try to use on cross examination to make its point. Assuming the Commission wants to hear that kind of information, even if there are other statements out there how many more statements does PSNH need to make its point and why should TransCanada be directed to find them? Moreover, Mr. Hachey already answered this question and provided the supporting documents that he relied upon for his testimony which PSNH requested.

Question 159 seeks information about estimates of newly proposed coal and natural gas combined cycle generating stations without any limit as to where such generating stations would have been proposed thus seeking information about any such units in the world. This kind of information is available from other sources and TransCanada identified in its response publicly available sources. The question is

“overbroad and too remote to the subject of this docket”. (Order No. 25,646 at 10) Any further information sought by PSNH is publicly available.

Question 161 asks for information from non-party affiliates about bus bar costs in New England. This is a narrower version of question 52 yet it should be denied for the same reasons: Mr. Hachey has responded for the affiliates that are parties to the case about natural gas delivered to New England; what difference does it or should it make to this proceeding if non-party affiliates might have other information about such prices?

In this Motion PSNH seeks two things: (1) for TransCanada to find and provide information from non-party affiliates that is publicly available, which thus violates the narrow “not otherwise available” exception in the Commission’s order; and (2) for confidential and proprietary information that TransCanada non-party affiliates may have, but that is not “necessary to this docket” because it was not referenced in prefiled testimony and was not reviewed, considered or relied upon by Mr. Hachey, nor is it information that PSNH had or relied upon. The Commission should deny PSNH’s requests on both accounts: because PSNH has failed to meet the particularized showing standard that the Commission laid out in Order No. 25,646 and because the information sought is irrelevant to the issues in this docket.

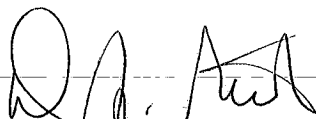
Finally, as the party filing the Motion it is PSNH’s burden to show why the Commission should compel responses to these seven data requests. Admin. Rule PUC Puc 203.25 provides that the party seeking relief through a motion “shall bear the burden of proving the truth of any factual proposition by a preponderance of the evidence” and PSNH has failed to do so.

TransCanada already answered all of these questions on behalf of the party affiliates, consistent with Admin. Rule Puc 203.09(b) and the Commission's directive in Order No. 25,646 – there is no reason to extend this discovery dispute any further. The Commission should deny the Motion.

WHEREFORE, TransCanada respectfully requests that this honorable
Commission:

- A. Deny PSNH's Motion to compel responses to data requests; and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,




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Certificate of Service

I hereby certify that on this 25th day of April, 2014 a copy of the foregoing objection was sent by electronic mail to the Service List.



Douglas L. Patch