

THE STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

DE 11-250

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Investigation of Merrimack Station Scrubber Costs and Cost Recovery

MOTION TO COMPEL
APPEARANCE of FORMER PSNH PRESIDENT GARY LONG
as a MATERIAL WITNESS

NOW COMES TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast, Inc. (collectively, TransCanada), and the Office of Consumer Advocate (OCA), (collectively, Joint Movants) and respectfully moves this Honorable Commission to compel the appearance of Gary Long, former president of Public Service Company of New Hampshire (PSNH) as a material witness during the hearing of the merits in the above-captioned case. In support of this motion the Joint Movants state:

1. On August 27, 2013 this Commission ordered Mr. Long to appear for a deposition in this docket DE 11-150. See *In Re PSNH, Investigation of Scrubber Costs and Cost Recovery, Order Compelling Deposition*, Order No. 25,566 (August 27, 2013). The Commission found:

...the Joint Movants have demonstrated that Mr. Long, as the president of PSNH, was directly and significantly involved in obtaining internal approval for the Scrubber project, including making presentations to the Northeast Utilities Risk and Capital Committee and Board of Trustees, and that his involvement in the project was extensive and unique.

Id at 4.

2. Pursuant to RSA 365:10 the Commission has the authority to require the appearance of witnesses. (“The commission shall have power to subpoena witnesses and administer oaths in any proceeding or examination instituted before or conducted by it, and to compel, by subpoena duces tecum, the production of any accounts, books, contracts, records, documents, memoranda and papers of any kind whatever.” RSA 365:10)
3. The underlying conditions which gave rise to the need for Mr. Long’s deposition continue to exist and support the need for his appearance as a witness in the hearings on the merits. Neither of the PSNH witnesses filing direct testimony, Mr. Smagula and Mr. Chung (adopting Mr. Bauman’s testimony), “ ‘were directly or indirectly involved in internal presentations and reviews of financial sensitivities and studies critical to PSNH’s decisions’ regarding whether to proceed with the Scrubber project or instead to divest or retire Merrimack Station.” Order No 25,566 (August 27, 2013) citing Joint Motion (July 29, 2013) at 4.
4. Nor has PSNH committed to the identity of witnesses filing Rebuttal testimony, due on July 11, 2014. (See June 2, 2014, DE 11-250 Status Conference, Transcript at 15. “We haven’t given thought to who is actually going to be here to testify at the hearing.”) While it is PSNH’s burden to prove that management acted prudently in its actions and decision making processes (Puc 203.25), should PSNH fail to produce a knowledgeable witness, the record will be incomplete regarding management prudence and the Commission will have insufficient evidence upon which to make its findings.

5. It is not sufficient that the deposition transcript and attachments be entered as an exhibit without the sponsoring witness. Should there be any matters that arise during the hearing that require clarification, or any information within the deposition that is incomplete, a witness on the stand is the best means of presenting that testimony.
6. As president of PSNH for 13 years and during the 2006-2009 time period of significance to questions of prudence, Mr. Long is the single PSNH employee with unique, irreplaceable knowledge about the management process related to events surrounding the scrubber. He is the only witness to prepare and present information to three significant decision making entities: 1) the Northeast Utilities Risk and Capital Committee and Board of Trustees, the Company's decision maker on capital investments; 2) The New Hampshire State legislature, the entity to which PSNH was required to report on the scrubber construction project; See RSA 125-O: 13 (IX); and 3) the Public Utilities Commission and Staff, the administrative agency charged with overseeing utility capital investments and rate recovery. RSA 125-O:18; RSA 365:4 and 363:22. Therefore Mr. Long's appearance and testimony at the Scrubber Investigation hearing of the merits is uniquely important and cannot be replaced by any other witness.
7. Mr. Long has appeared and testified before the Commission on many matters. The Joint Movants believe he remains in the state and there is no evidence of significant administrative burden related to his appearing as a witness. While a deposition may suffice if a witness is truly unavailable, there is no reason to

make do with a transcript when the witness is available. Mr. Long has a massive amount of relevant and unique knowledge of the exact matter in dispute. As the Commission stated in relation to Mr. Long's deposition:

We find that there is a substantial need for information that may have informed PSNH's decision whether to proceed with the Scrubber project or divest or retire Merrimack Station, and that this information is relevant and likely admissible on the issues of PSNH's prudence and cost recovery. Order No 25,566 (August 27, 2013) at 4.

This need for relevant information is equally if not more pressing at the Commission's hearing on the merits in this proceeding.

8. Conservation Law Foundation and Sierra Club do not object to the motion. PSNH objects and states that Mr. Long has retired from Northeast Utilities as of June 1, 2014 and the Company has no ability to require his participation in a hearing. Staff takes no position on the motion.

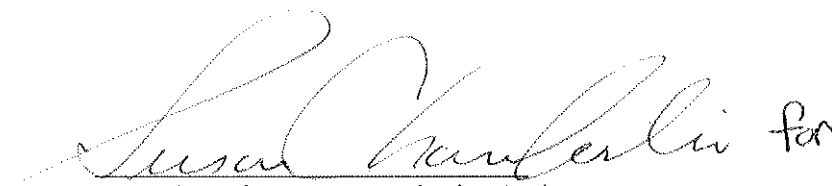
WHEREFORE, the Joint Movants respectfully request that this honorable Commission:

- A. Compel the appearance of Mr. Gary Long as a witness in the hearing on the merits in this docket; and
- B. Grant such other relief as may be just and equitable.

Respectfully submitted,



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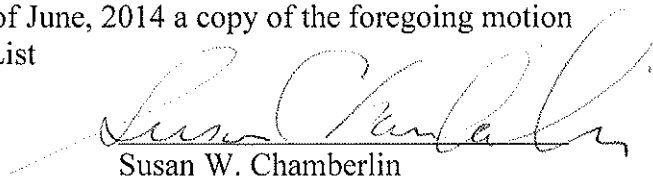


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June 20, 2014

Certificate of Service

I hereby certify that on this 20 day of June, 2014 a copy of the foregoing motion was sent by electronic mail to the Service List



Susan W. Chamberlin