

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire

Investigation of Scrubber Costs and Cost Recovery

Docket No. DE 11-250

Objection
of
Public Service Company of New Hampshire
to
TransCanada's Motion
Regarding Scope of Proceedings Related to
Public Service Company of New Hampshire's
Options for Action Regarding RSA 125-O
and
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 “Motion Regarding Scope of Proceedings Related to Public Service Company of New Hampshire's Options for Action Regarding RSA 125-O and Motion to Compel” (the “Second Rebuttal Motion”)¹ dated August 25, 2014.

In support of this Objection, PSNH states as follows:

1. TransCanada’s Second Rebuttal Motion is a hybrid, combining two motions (a motion regarding scope and a motion to compel) into one pleading. The thrust of this Second Rebuttal Motion is TransCanada’s request for a ruling from the Commission that PSNH’s efforts to support, block, or oppose legislation regarding the Scrubber are relevant to this proceeding.

¹ Another motion was filed simultaneously by TransCanada, which is referred to herein as the “First Rebuttal Motion.”

TransCanada is wrong. The Commission has previously ruled on this issue and held that such matters are not relevant to this proceeding.

2. TransCanada asserts that the Commission should look beyond the four-corners of a law as enacted by the General Court, and deem a utility imprudent if that law imposes costs on consumers. Although this particular docket addresses the Scrubber Law, the principle asserted by TransCanada would have far reaching effects.² Are the utilities of New Hampshire to be deemed imprudent of a “failure to act”³ if they do not lobby against legislation that would impose utility tax increases, the cost of which flow through to customers? Or renewable portfolio standard requirements, the cost of which flow through to customers? Or gasoline tax increases, which increases costs that flow through to customers? Or, pick any other legislative initiative TransCanada or some other intervening party does not like. TransCanada’s assertion is unreasonable.

3. This Commission has consistently ruled that:

We see no relevance to PSNH’s, or Mr. Long’s involvement in *cooperating with* the Legislature to pass the Scrubber law, *or ... alleged attempts to block* the Legislature or this Commission from looking further into whether PSNH should have proceeded with the Scrubber project.

Order No. 25,566 at 5. The emphases in this quotation were added by the Commission itself when it quoted this passage and relied on it in Order No. 25,640 at 10.

4. TransCanada is recycling an argument it has previously presented to the Commission on more than one occasion. As noted above, the Commission first ruled on this matter in Order No. 25,566 (August 27, 2013). In Order No. 25,592 (November 1, 2013), the Commission addressed

² See Mr. Reed’s discussion of this topic in his testimony at page 12.

³ Second Rebuttal Motion at ¶5.

the very same argument by TransCanada. *See* Order No. 25,592 at 3. Rejecting TransCanada's request, the Commission noted:

While we recognize that PSNH had the discretion to request legislative changes or to support or oppose legislation, it is the legislature itself, and not PSNH, that is responsible for enacting law. We would be hard pressed to second guess the legislature and determine what the law would have become if PSNH had made a particular showing before a legislative committee. Instead we will determine what PSNH's management options were under existing law. Accordingly, we overrule TransCanada's exceptions.

Id. at 5-6.

5. Not content with the Commission's two prior Orders regarding this matter, TransCanada attempted to resurrect the issue by having its witness, Mr. Hachey, address it in his prefiled testimony filed on December 23, 2013. In Order No. 25,640 (March 26, 2014) the Commission rejected this ploy. The Commission agreed with PSNH that portions of Mr. Hachey's prefiled testimony would be stricken based on the decision that, "they are statements that TransCanada offered to prove PSNH was 'cooperating with' or 'attempt[ing] to block' legislation, *which we found to be irrelevant.*" *Id.* at 12, emphasis added.

6. In three previous Orders the Commission has decided the issue contained in TransCanada's Second Rebuttal Motion. All three orders consistently and unambiguously held⁴ that "the law is the law" - - what PSNH did or did not do before the Legislature is not relevant to this proceeding.⁵ Nothing that TransCanada includes in its Second Rebuttal Motion was previously "overlooked or mistakenly conceived in the original decision," *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citation omitted); nothing TransCanada "presents [is] new

⁴ In contrast to the issue of "retirement;" *see* PSNH's Motion in Limine relating to retirement dated August 21, 2014.

⁵ *See also* Order No.24,979 at 15 [*Re PSNH*, 94 NH PUC 311, 318-19 (2009)]: "The Legislature, not PSNH, made the choice, required PSNH to use a particular pollution control technology at Merrimack Station, and found that installation is 'in the public interest of the citizens of New Hampshire and the customers of the affected sources.'"

evidence not previously available.” See *O’Loughlin v. N.H. Personnel Comm’n*, 117 N.H. 999, 1004 (1977), *Hollis Telephone, Inc., Kearsarge Telephone Co., Merrimack County Telephone Co., and Wilton Telephone Co.*, Order No. 25,088 (Apr. 2, 2010) at 14; the motion merely restates prior arguments and asks for a different outcome. See *Connecticut Valley Electric Co.*, Order No. 24,189, 88 NH PUC 355, 356 (2003), *Comcast Phone of New Hampshire*, Order No. 24,958 at 7, 94 NH PUC 166 (2009), and *Public Service Company of New Hampshire*, Order No. 25,168 (November 12, 2010) at 10.⁶

7. In light of these prior decisions, the Commission should again reject TransCanada’s request to broaden the scope of this proceeding, and ratify its three prior Orders wherein it consistently and repeatedly held that PSNH’s involvement in cooperating with the Legislature to pass the Scrubber law, or alleged attempts to block the Legislature or this Commission from looking further into whether PSNH should have proceeded with the Scrubber project are not relevant to this proceeding.⁷

8. In light of the Commission’s prior rulings on this subject, TransCanada’s motion to compel responses to questions TC 06-12, -14, -105 and -252 should be similarly rejected. Those questions, and PSNH’s objections thereto are:

⁶ See also Order No. 25,697 issued in this proceeding on July 28, 2014 at 3; Order No. 25,671 issued in this proceeding on May 29, 2014 at 3; Order No. 25,565 issued in this proceeding on August 27, 2013 at 5-6; Order No. 54,546 issued in this proceeding on July 15, 2013 at 5-6; Order No. 25,506 issued in this proceeding on May 9, 2013 at 16; Order No. 25,361 issued in this proceeding on May 11, 2012 at 4-5.

⁷ If the Commission was to reverse course and grant the Second Rebuttal Motion, it would create a cascade of other necessary actions; the Commission would also have to: revisit its decision in Order No. 25,640 to strike portions of the prefiled testimony of TransCanada’s witness, Mr. Hachey, relating to this issue; allow additional discovery on that previously stricken testimony; allow PSNH the opportunity to supplement its rebuttal testimony in light of that additional testimony and the broadened scope of the proceeding; and, presumably grant other parties an opportunity to seek discovery on PSNH’s supplemented rebuttal.

Q-TC-06-012:

With regard to your testimony on page 8 regarding practical options available to PSNH, was supporting SB 152 in 2009 a practical option for PSNH?

PSNH objects to this request on the following bases:

i. Relevance.

ii. In Order No. 25,566 the Commission stated it saw “no relevance to PSNH’s ... involvement in cooperating with the Legislature to pass the Scrubber law.”

iii. In Order No. 25,646 the Commission set forth five discovery standards. Per Standard #3, “Standard Requests for Statements to Legislators or other Governmental Officials” (“Standard #3), the Commission decided, “evidence that proves whether a party was ‘cooperating with’ or ‘attempt[ing] to block’ legislation is irrelevant, Public Service Co. of N.H., Order No. 25,566 at 5 (Aug. 27, 2013).” This request violates this standard.

Q-TC-06-014:

What were the options that PSNH had in terms of the position that it took and the information it provided on SB 152 in 2009??

PSNH objects to this request on the following bases:

i. Relevance.

ii. In Order No. 25,566 the Commission stated it saw “no relevance to PSNH’s ... involvement in cooperating with the Legislature to pass the Scrubber law.”

iii. In Order No. 25,646 the Commission set forth five discovery standards. Per Standard #3, “Standard Requests for Statements to Legislators or other Governmental Officials” (“Standard #3), the Commission decided, “evidence that proves whether a party was ‘cooperating with’ or ‘attempt[ing] to block’ legislation is irrelevant, Public Service Co. of N.H., Order No. 25,566 at 5 (Aug. 27, 2013).” This request violates this standard.

Q-TC-06-105:

Reference pages 10 through 13 of Mr. Harrison and Mr. Kaufman’s testimony, upon which you rely. Do you believe that a prudent utility in PSNH’s position in 2009 would have identified these uncertainties for the Legislature if said Legislature was considering further study of a \$450 million capital investment?

PSNH objects to this request on the following bases:

i. Relevance.

ii. In Order No. 25,566 the Commission stated it saw “no relevance to PSNH’s ... involvement in cooperating with the Legislature to pass the Scrubber law.”

iii. In Order No. 25,566, the Commission stated, “PSNH is not responsible for the Legislature’s actions, nor for ours.”

iv. In Order No. 25,646 the Commission set forth five discovery standards. Per Standard #3, “Standard Requests for Statements to Legislators or other Governmental Officials” (“Standard #3), the Commission decided, “evidence that proves whether a party was ‘cooperating with’ or ‘attempt[ing] to block’ legislation is irrelevant, Public Service Co. of N.H., Order No. 25,566 at 5 (Aug. 27, 2013).” This request violates this standard.

Q-TC-06-252:

Are you aware of any efforts to change the Scrubber law so that all customers, rather than just default service customers, would have to pay for the Scrubber? (consider, for example, the testimony of Mr. Long to the Legislative Oversight Committee that the scrubber law is unfair because only default service customers must pay for the capital investment). Please list these efforts during each year from 2007 to present, summarize each effort, including communications with legislators and the executive branch, and provide all documentation and communications regarding that effort.

PSNH objects to this request on the following bases:

i. Relevance.

ii. This request is unrelated to the testimony of the witness it was directed to. This question was addressed to Dr. Shapiro. Dr. Shapiro did not testify regarding the subject of this question. Dr. Shapiro’s testimony was limited to a presentation of her study, the purpose of which was to provide an estimate of the economic benefits to New Hampshire – jobs, gross state product, and personal income – from the construction of a wet flue gas desulphurization system, commonly called a scrubber, at Merrimack Station. In Order No. 25,646 the Commission set forth five discovery standards. Per Standard #2, “Standard for Requests of a Party Regarding its Witness’s Testimony” (Standard #2), the Commission decided, “PSNH also directed questions at parties that are unrelated to the testimony sponsored by those parties. We will generally not compel answers to those requests because they do not seek

evidence relevant to that party's witness and they could not provide impeachment evidence."

9. In every one of these questions, TransCanada seeks to inquire about PSNH's involvement in cooperating with the Legislature to pass the Scrubber law, or alleged attempts to block the Legislature or this Commission from looking further into whether PSNH should have proceeded with the Scrubber project. The Commission has ruled three times that such information is irrelevant to this proceeding. TransCanada's motion to compel contained within its Second Rebuttal Motion raises nothing new and should be denied.

10. TransCanada concludes its Second Rebuttal Motion by chiding PSNH for "continuing to fall back on the argument that the law was a mandate... ." Second Rebuttal Motion at ¶14. Was it a mandate? - - TransCanada said it was.⁸ But, that matter is irrelevant to the Second Rebuttal Motion.

WHEREFORE, PSNH objects to TransCanada's Second Rebuttal Motion and for the reasons expressed herein, PSNH respectfully requests:

- A. That the Commission ratify its previous Order Nos. 25,566; 25,592; and 25,640 and deny TransCanada's motion regarding the scope of this proceeding; and,
- B. That the Commission deny TransCanada's motion to compel responses to questions TC 6-12, -14, -105 and -252 as those questions do not pertain to information that is relevant to this proceeding.

⁸ See Rebuttal testimony of Mr. Smagula at page 60.

Respectfully submitted this 3rd day of September, 2014.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By:  _____

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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2014, 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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