

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 11-250

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Investigation of Merrimack Station Scrubber Project and Cost Recovery

Order Regarding TransCanada Motion to Compel

ORDER NO. 25,398

August 7, 2012

I. PROCEDURAL HISTORY

On November 18, 2011, the Commission opened Docket DE 11-250 to investigate the costs of and cost recovery related to the installation of the wet flue gas desulphurization system (Scrubber) at the Merrimack Station owned and operated by Public Service Company of New Hampshire (PSNH). The Office of Consumer Advocate (OCA) filed a letter on December 12, 2011 stating that it would participate in the docket on behalf of residential ratepayers pursuant to RSA 363:28. On December 23, 2011, the Commission issued a secretarial letter granting the motions to intervene filed by New England Power Generators Association, Inc. (NEPGA), TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (TransCanada), Sierra Club and Conservation Law Foundation (CLF).

On April 10, 2012, the Commission issued Order No. 25,346 setting a temporary rate to allow PSNH to begin to recover costs associated with the Scrubber.¹ PSNH filed testimony with associated exhibits on June 15, 2012 related to the permanent rate phase of this docket.

¹ Additional procedural history on discovery conducted during the temporary rate phase of the proceeding can be found in *Public Service Company of New Hampshire*, Order No. 25,334 (March 12, 2012) and *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) on PSNH's motion to reconsider Order No. 25,334.

Also on June 15th, Staff filed a proposed procedural schedule for the permanent rate phase which the Commission approved by secretarial letter issued on June 26, 2012. The procedural schedule allowed for discovery on a rolling basis through August 31, 2012.

On July 16, 2012, TransCanada filed a Motion to Compel PSNH to respond to certain data requests (Motion). PSNH filed an objection to the Motion to Compel on July 26, 2012 (Objection).

II. STANDARD OF REVIEW

In addressing a motion to compel discovery responses, we consider whether the information being sought is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. *See, Investigation into Whether Certain Calls are Local*, Order 23,658 (2001) at 5. “[I]n general, discovery that seeks irrelevant or immaterial information is not something we should require a party to provide.” *City of Nashua*, Order 24,681 (2006) at 2. In Order 24,681 we stated:

In the context of civil litigation, New Hampshire law favors liberal discovery, *see, e.g., Yancey v. Yancey*, 119 NH 197, 198 (1979), and discovery is regarded as “an important procedure ‘for probing in advance of trial the adversary’s claims and his possession or knowledge of information pertaining to the controversy between the parties.’” *Johnston v. Lynch*, 133 NH 79, 94 (1990) (citing *Hartford Accident etc., Co. v. Cutter*, 108 NH 112, 113 (1967)). Consistent with Superior Court Rule 35(b) regarding the scope of discovery, we require parties to show that the information being sought in discovery is relevant to the proceeding or is reasonably calculated to lead to the discovery of admissible evidence.

We review the Motion and the Objection in light of these principles and the statutory directive in RSA 125-O:18 that PSNH “shall be allowed to recover all prudent costs of

complying with the requirements of the [Mercury Emissions] subdivision in a manner approved by the public utilities commission.”

III. MOTION TO COMPEL, OBJECTIONS AND COMMISSION ANALYSIS REGARDING VARIANCE ISSUE

A. TransCanada’s Requests

TransCanada moved to compel PSNH to respond to the following discovery requests:

From Set 1, TC 1-1, TC 1-2, TC 1-3, TC 1-4, TC 1-5, TC 1-6, TC 1-7, TC 1-8, TC 1-9, TC 1-10, TC 1-11, TC 1-12,² TC 1-14, TC 1-15 and TC 1-16; and from Set 2, TC 2-2, TC 2-3, TC 2-4, 2-5 and TC 2-6. We will consider in turn each data request subject to TransCanada’s Motion.

TC 1-1:

(Originally numbered TC-01, Q-TC-001 in the Temporary Rates portion of this docket) Please provide copies of all economic analyses relied on by PSNH in its decision to install a flue gas scrubber at Merrimack Station.

Response:

PSNH objects to this question as it is based upon a faulty premise. Notwithstanding this objection, PSNH responds as follows:

PSNH was required by law (RSA 125-O: 11-18) to install a wet flue gas desulfurization system at Merrimack Station as soon as possible. ("The owner shall install and have operational scrubber technology to control mercury emissions at Merrimack Units 1 and 2 no later than July 1, 2013." RSA 125-O: 13, I) The law is not discretionary.

In its Motion, TransCanada stated that TC 1-1, as well as TC 1-2 through 1-5, TC 1-12 and TC 1-14 through 1-16, sought PSNH’s economic analyses related to the installation of the Scrubber system and to ascertain whether PSNH considered seeking a variance from the

² At the end of its Motion, TransCanada requested that PSNH be compelled to respond to TC 1-13. Based on a reading of its Motion at page 3, TransCanada intended that PSNH be compelled to respond to TC 1-12, not TC 1-13.

requirements of the emission reduction goals set by RSA 125-O. The additional data requests associated with TC 1-1 are as follows:

TC 1-2:

(Originally numbered TC-01, Q-TC-002 in the Temporary Rates portion of this docket)
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.

Response:

PSNH objects to this question as it is based upon a faulty premise. Moreover, the information requested is irrelevant to the subject of this proceeding. Notwithstanding this objection, PSNH responds as follows:

See the response to [TC 1-1]

TC 1-3:

(Originally numbered TC-01, Q-TC-003 in the Temporary Rates portion of this docket)
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.

Response:

PSNH objects to this question as it is based upon a faulty premise. Moreover, the information requested is irrelevant to the subject of this proceeding. Notwithstanding this objection, PSNH responds as follows: See the response to [TC 1-1].

TC 1-4:

(Originally numbered TC-01, Q-TC-004 in the Temporary Rates portion of this docket)
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.

Response:

PSNH objects to this question because the information requested is irrelevant to the subject of this proceeding.

TC 1-5:

(Originally numbered TC-01, Q-TC-005 in the Temporary Rates portion of this docket)

Please identify all individuals at PSNH or its affiliates, or any consultant to PSNH, responsible for conducting economic analyses related to PSNH's decision to install a flue gas scrubber at Merrimack Station.

Response:

PSNH objects to this question as it is based upon a faulty premise. Notwithstanding this objection, PSNH responds as follows: See the response to [TC 1-1].

TC 1-12:

(Originally numbered TC-01, Q-TC-013 in the Temporary Rates portion of this docket)

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?

Response:

PSNH objects to this question as the information sought is not relevant to the subject of this proceeding; i.e., recovery of the prudent costs of complying with the legislative mandate contained in 2006 N.H. Laws, Chapter 105, "AN ACT relative to the reduction of mercury emissions." In addition, the question requires speculation regarding future regulatory actions of NHDES and/or USEPA.

TC 1-14:

(Originally numbered TC-01, Q-TC-015 in the Temporary rates portion of this docket)

Did PSNH give any consideration to whether to seek a variance from the mercury emission reduction requirements of RSA 125-O as authorized under RSA 125-O:17?

Response:

PSNH objects to this question, as it is based upon a faulty and erroneous interpretation of the law. Notwithstanding this objection, PSNH responds as follows:

There was no need for PSNH to seek any variance from NHDES under either RSA 125-O:17 sections I or II, because, I. the scrubber was successfully placed into service prior to the statutorily mandated date of July 1, 2013 (RSA 125-O:13, I); and, II. an alternative reduction requirement was not necessary as the scrubber meets all of the statutorily mandated emissions reduction requirements set forth in RSA 125-O:13.

TC 1-15:

(Originally numbered TC 01, QTC-016 in the Temporary Rates portion of this docket) If the response to question 15 is in the negative, please state the basis for your response.

Response:

See the response to [TC 1-14].

TC 1-16:

(Originally numbered TC-01, Q.TC-017 in the Temporary Rates portion of this docket)

If the answer to question 15 is in the affirmative please explain the process which PSNH used to decide whether to seek the variance, which employees of PSNH were Involved in such decision, and provide any and all correspondence, working papers and documents related to such consideration.

Response:

See the response to [TC 1-14].

TransCanada said that PSNH's unresponsive or incomplete responses appear to be based on an argument that the law mandates the use of the wet flue gas desulphurization technology and that PSNH could not evade this requirement, thus relieving PSNH from the obligation to respond to these questions. TransCanada argued that PSNH's objection based on relevancy ignores the ability, and from a prudence perspective the responsibility, that PSNH had to consider seeking a variance pursuant to RSA 125-O:17, which includes technological or economic infeasibility as the basis for a request for a variance.

RSA 125-O:17 reads as follows:

The owner may request a variance from the mercury emissions reduction requirements of this subdivision by submitting a written request to the department. The request shall provide sufficient information concerning the conditions or special circumstances on which the variance request is based to demonstrate to the satisfaction of the department that variance from the applicable requirements is necessary.

I. Where an alternative schedule is sought, the owner shall submit a proposed schedule which demonstrates reasonable further progress and contains a date for final compliance

as soon as practicable. If the department deems such a delay is reasonable under the cited circumstances, it shall grant the requested variance.

II. Where an alternative reduction requirement is sought, the owner shall submit information to substantiate an energy supply crisis, a major fuel disruption, an unanticipated or unavoidable disruption in the operations of the affected sources, or technological or economic infeasibility. The department, after consultation with the public utilities commission, shall grant or deny the requested variance. If requested by the owner, the department shall provide the owner with an opportunity for a hearing on the request.

According to TransCanada, the plain language of the statute gives PSNH the ability to seek a variance if and when the project became uneconomic or if the technology designated in the law became uneconomic or not the least expensive or most efficient way of achieving the emissions reductions required by law. TransCanada asserted that PSNH's responses suggest that PSNH believes it had no duty or ability to even look into the possibility of a variance. Further, according to TransCanada, PSNH overlooked the plain language of the statutory requirement and the Commission's enabling authority establishing the scope of cost recovery. Pursuant to RSA 125-O:18, the Commission may only authorize cost recovery through PSNH's default energy service charge. TransCanada said that the Commission's prudence review may consider the extent to which it was reasonable to believe that the costs of the project could feasibly be recovered through PSNH's default service charge. TransCanada also referred to *Public Service Company of New Hampshire*, Order No. 24,914 (November 12, 2008) where the Commission stated that RSA 125-O:17 provides a basis for the Commission to consider, in the context of the prudence review of the Scrubber costs, "arguments as to whether PSNH had been prudent in proceeding with installation of the scrubber technology in light of increased cost

estimates and additional costs from other reasonably foreseeable regulatory requirements. . .”
Order No. 24,914 at 13.

B. PSNH’s Objection

In its Objection regarding TC 1-1 through 1-5, PSNH repeated its response to the data request, that is, that RSA 125-O:11-18 requires PSNH to “install and have operational scrubber technology to control mercury emissions at Merrimack Units 1 and 2 no later than July 1, 2013.” RSA 125-O:13, I. PSNH argued that the information that TransCanada seeks from PSNH does not result in the discovery of admissible evidence. Further, PSNH argued that TransCanada mistakenly assumes that PSNH has the liberty to decide whether or not to install the Scrubber; rather, the Legislature made the decision that installation of the Scrubber was in the public interest and mandated such installation. PSNH stated that it did not rely on economic analyses or fuel forecasts in any decision to install the Scrubber—it complied with a statutory requirement that it could not circumvent.

With respect to TC 1-14 through 1-16, PSNH also asserted that TransCanada is misguided in its assertion that PSNH had the ability to seek what amounts to a “waiver” of the mandate to install the scrubber set forth in RSA 125-O. According to PSNH, RSA 125-O:17, II clearly and expressly applied only to situations “where an alternative reduction requirement is sought.” PSNH opined that the variance provision does not allow the Department of Environmental Services (DES) to waive or repeal the determination of the General Court that the installation of the Scrubber is in the public interest or the legislative mandate that the Scrubber must be installed to control mercury emissions at Merrimack Units 1 and 2.

In further support of its objection, PSNH argued that TransCanada's request is based upon a faulty and erroneous interpretation of the variance provision because TransCanada did not read the statute in its entirety. PSNH said that RSA 125-O contains a critical non-severability provision, RSA 125-O:10, which is unusual and should be given careful consideration. In fact, according to PSNH, RSA 125-O:10 appears to be the only such statutory provision in New Hampshire law at this time.

C. Commission Analysis

RSA 125-O:10 states as follows: "No provision of RSA 125-O:1 through RSA 125-O:18 of this chapter shall be implemented in a manner inconsistent with the integrated, multi-pollutant strategy or RSA 125-O:1 through RSA 125-O:18 of this chapter, and to this end , the provisions of RSA 125-O:1 through RSA 125-O:18 of this chapter are not severable."

According to PSNH, the non-severability provision ensures that a wet flue gas desulphurization system will be built at Merrimack Station because it is mandated in and elaborated upon in numerous integrated provisions. PSNH asserted that the applicability of the variance provision (RSA 125-O:17) is definitively limited not only by the plain meaning of the provision (limiting it to schedule and reduction amount) but also by the non-severability mandate. PSNH insisted that the non-severability provision requires the statute to be read as a whole. PSNH argued that TransCanada's interpretation of RSA 125-O:17, the variance provision, would essentially nullify the non-severability clause and turn the construction of the Scrubber itself into an option dependent on a number of variables.

The discovery dispute between TransCanada and PSNH regarding the responses to TC 1-1 through 1-5, TC 1-12 and TC 1-14 through 1-16 raises important questions of law that are

necessary for us to consider in ruling on the Motion. Moreover, 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. PSNH and TransCanada have provided arguments regarding the proper interpretation of certain provisions of RSA 125-O:11-18, and PSNH has interpreted 125-O:10, but no other party has done so.

Accordingly, we will provide all parties the opportunity to file legal briefs regarding their views of 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. Without limiting the generality of the foregoing, we are specifically interested in the parties' views regarding (i) the types of variance requests that may be made under RSA 125-O:17, given that it comprises two sentences followed by subsections I and II; (ii) the meaning of the phrases "alternative reduction requirement" and "technological or economic infeasibility" in RSA 125-O:17, II; (iii) the duty of PSNH to seek a variance from DES under RSA 125-O:17, if any, in order to obtain cost recovery under RSA 125-O:18; (iv) the meaning and application of the non-severability clause in RSA 125-O:10 for purposes of the prudence determination we must make under RSA 125-O:18; and (v) how RSA 125-O:10 and RSA 125-O:17 relate to one another and to the prudence determination we must make under RSA 125-O:18.

Briefs will be due by no later than August 28 2012. To accommodate this briefing schedule, we will defer ruling on the Motion regarding data requests TC 1-1 through 1-5, TC 1-

12 and TC 1-14 through 1-16 until such time as we have considered the briefs and issued a ruling and we will make any necessary changes to the procedural schedule at a future date.

IV. MOTION TO COMPEL, OBJECTIONS AND COMMISSION ANALYSIS RELATED TO PSNH'S LEGISLATIVE EFFORTS

The next series of data request referenced in TransCanada's Motion are TC 1-6 through TC 1-11.³

TC 1-6:

(Originally numbered TC-01, Q-TC-006 in the Temporary Rates portion of this docket) Please provide a copy of any document provided to any elected or appointed government official in New Hampshire related to its position on achieving legislative approval for "An ACT relative to the reduction of mercury emissions" that took effect on June 8, 2006.

Response:

PSNH was a member of a collaborative group that supported the passage of HB 1673. See the legislative record for HB 1673 which contains the testimony of Terrance Large and Donna Gamache of PSNH as well as that of former DES Air Resources Director Robert Scott in support of the bill. See also the attached information responsive to query.

We find that PSNH was responsive to TC 1-6 and we will deny TransCanada's Motion with respect to this data request.

TC 1-7:

(Originally numbered TC-01, Q-TC-007 in the Temporary Rates portion of this docket)

Please identify any individual employed by or otherwise compensated by PSNH to work on its behalf to achieve legislative approval for "An ACT relative to the reduction of mercury emissions" that took effect on June 8, 2006.

Response:

The enactment of 2006 N.H. Laws, Chapter 105, "AN ACT relative to the reduction of mercury emissions" involved a collaborative effort which included the legislature, the NH DES, environmental organizations, and the Company,

³ It is unclear whether TransCanada's motion includes TC 1-6 because, while TC 1-6 is referenced in the text of the motion, it is not included on the list of data requests that appears in the prayer for relief. Due to the uncertainty, this order addresses TC 1-6.

among others. Individuals employed by or otherwise compensated by PSNH who directly participated in those collaborative efforts include Donna Gamache and Terrance Large. Other Company employees were involved in providing information to those directly involved in the collaborative effort.

The Commission has reviewed PSNH's response to TC 1-7 and finds that PSNH provided a substantive response to the question as it relates to the Company's employees; however, the response is silent as to persons "otherwise compensated" by PSNH. TransCanada's Motion, therefore, is granted in part to compel response regarding persons "otherwise compensated" by PSNH, if any.

TC 1-8:

(Originally numbered TC-01, Q-TC-008 in the Temporary Rates portion of this docket)

Please provide detail about how much PSNH spent on outside lobbyists who assisted PSNH during the 2006 legislative session.

Response:

PSNH objects to this response as the information requested is not relevant to the subject of this proceeding. Moreover, any lobbying costs incurred by PSNH are recovered "below the line" and thus are not included as part of the costs sought to be recovered by PSNH in this proceeding.

This question requests detail on PSNH's expenses for outside lobbyists during the 2006 legislative session when the General Court enacted the requirement that PSNH install the Scrubber. According to TransCanada, the costs incurred by PSNH in lobbying for RSA 125-O *et seq.* is a critical topic for discovery in this proceeding because PSNH contends that it had no choice but to invest nearly half a billion dollars in public utility rate base on which PSNH earns a "healthy return" for its shareholders. TransCanada said that the amount of money that PSNH spent on lobbyists should be discoverable to elucidate whether the lobbying may have influenced PSNH's contemporaneous investment decisions for the Scrubber. PSNH reiterated its response to TC 1-8, that is, the lobbying costs are not relevant to this proceeding.

While we do not agree that simply because lobbying costs are “below the line” they can never be relevant, we find that the detail regarding PSNH’s lobbying costs is not information that is relevant to this proceeding nor is it reasonably calculated to lead to the discovery of admissible evidence in this proceeding and, therefore, we deny the Motion as it relates to TC 1-8.

TC 1-9:

(Originally numbered TC-01, Q-TC-009 in the Temporary Rates portion of this docket)

Please provide a copy of any document provided to any elected or appointed government official in New Hampshire related to its position opposing legislative approval for Senate Bill 152 and House Bill 496 in 2009.

Response:

PSNH objects to this question as the information sought is not relevant to the subject of this proceeding; i.e., recovery of the prudent costs of complying with the legislative mandate contained in 2006 N.H. Laws, Chapter 105, “AN ACT relative to the reduction of mercury emissions.”

The grounds for TransCanada’s Motion as to TC 1-9 are summarized above in the discussion regarding TC 1-8. PSNH’s objection to TC 1-9 (and 1-10, below) is based on its argument that the legislature’s ultimate action is what is relevant for this proceeding, not what the legislature considered as part of any deliberations. Senate Bill (SB) 152 would have required the Commission to investigate whether the installation of the Scrubber was in the interest of PSNH’s retail customers and consistent with the least cost planning and the state’s energy policy act. House Bill (HB) 496 would have amended RSA 125-O by limiting PSNH’s recovery of Scrubber costs from ratepayers to \$250 million, the 2006 estimate for costs of the Scrubber installation. Both SB 152 and HB 496 were found “inexpedient to legislate” in the 2009 legislative session, meaning that neither bill became law. TransCanada seeks a copy of

any documents provided by PSNH to any elected or appointed government official in New Hampshire related to PSNH's opposition to both bills. PSNH, in its Objection, argues that the requested information is not relevant to this proceeding.

We disagree with PSNH's position. On September 2, 2008, PSNH filed a letter with the Commission in Docket DE 08-103 which provided an update of the Scrubber installation project, and that filing indicated that the cost estimate for the Scrubber had increased from the original 2006 estimate of \$250 million to \$457 million. HB 496 was introduced to limit PSNH's cost recovery for Scrubber costs to \$250 million and it appears, SB 152 was introduced to require the Commission to re-evaluate the installation of the Scrubber technology. As we previously observed, the interpretation of RSA 125-O:17, the so-called variance provision, is critical to our ruling on discovery and its relevance to the prudence review being conducted in this docket. The responses to this data request could shed light on PSNH's position regarding RSA 125-O:17 or other provisions of the Scrubber law, and could produce information relevant to the prudence review. Based on the foregoing analysis, we grant TransCanada's Motion as to TC 1-9.

TC 1-10:

(Originally numbered TC-01, Q-TC-010 in the Temporary Rates portion of this docket)
Please identify any individual employed by or otherwise compensated by PSNH to work on its behalf to oppose legislative approval for Senate Bill 152 and House Bill 496 in 2009.

Response:

PSNH objects to this question as the information sought is not relevant to the subject of this proceeding; i.e., recovery of the prudent costs of complying with the legislative mandate contained in 2006 N.H. Laws, Chapter 105, "AN ACT relative to the reduction of mercury emissions."

TC 1-10 requests the identity of outside lobbyists relative to the 2008-2009 legislative session. The arguments for and against the Motion are summarized above in connection with TC 1-8. We note that PSNH did not object to and responded in part to similar data request, TC 1-7, relative to the persons employed by or otherwise compensated by PSNH to work on its behalf in the 2006 legislative session. Although PSNH objected to TC 1-10, we see no reason to distinguish the treatment of TC 1-10 from TC 1-7. Therefore, we grant TransCanada's Motion related to TC 1-10.

TC 1-11:

(Originally numbered TC-01, Q-TC-011 in the Temporary Rates portion of this docket)

Please provide detail about how much PSNH spent on outside registered lobbyists who assisted PSNH during the 2009 legislative session.

Response:

PSNH objects to this response as the information requested is not relevant to the subject of this proceeding. Moreover, any lobbying costs incurred by PSNH are recovered "below the line" and thus are not included as part of the costs sought to be recovered by PSNH in this proceeding. See NH Code Admin. Rule Puc 310. In addition, lobbying reports required by RSA Chapter 15 are publicly available from the Secretary of State.

TC 1-11 is identical to TC 1-8 except that it asks for PSNH's lobbying costs during the 2009 legislative session when SB 152 and HB 496 were before the Legislature. Detail regarding PSNH's lobbying costs will not produce any relevant information that could be admitted as evidence in this proceeding and, therefore, we deny the Motion as it relates to TC 1-11.

TC 2-2:

Please provide copies of any and all correspondence that PSNH had with DES that pertains to question #1 above. [TC 2-1 asked for documents used as the basis for the original scrubber cost estimate that PSNH provided to DES Commissioner Michael Nolin].

Response:

There is no correspondence between PSNH and NHDES on scrubber costs.

In its Motion, TransCanada references a January 12, 2006 letter from DES Commissioner Michael Nolin to the Science, Technology and Energy Committee relative to HB 1673, the legislation which required the installation of Scrubber Technology at Merrimack Station. The letter, at page 2, states as follows: "Based on data shared by PSNH, the total capital cost for this full redesign will not exceed \$250 million dollars. . ." Although TransCanada specifically requested "all correspondence," we are not inclined to deny the Motion for TC 2-2 because the details of any "data shared" with DES may be relevant to this proceeding. If we did deny the Motion, TransCanada could merely submit a rewritten question which asked in more general terms for PSNH to provide the "data shared" with DES which we would grant. For the sake of administrative efficiency and to assure the orderly conduct of this proceeding, we will grant the Motion as it pertains to TC 2-2 and require PSNH to provide as a response all presentations, data or other documents that it shared with DES to support the estimate of \$250 million.

TC 2-3:

Please provide copies of any and all documents that PSNH or any of its employees, officials, representatives, agents or lobbyists provided to DES, any legislator or any state official to support the statement in DES Commissioner Michael Nolin's January 12, 2006 letter to the House Science, Technology & Energy Committee in support of HB 1673 to the effect that the costs of the scrubber will be fully mitigated by the savings in SO₂ emission allowances.

Response:

PSNH has never claimed that the cost of the scrubber will be fully mitigated by the savings avoided in the purchase of SO₂ emissions allowances.

In its Motion, TransCanada insisted that PSNH did not fully respond to the question. PSNH's objection is based on the fact that it has already responded to "these questions" (sic), and, therefore, its inclusion in the Motion is inappropriate. Although PSNH states that it never claimed that the cost of the Scrubber would be fully mitigated by the savings avoided in the purchase of SO₂ emissions allowances, it is reasonable to conclude that PSNH provided some information to the Legislature or to DES regarding avoided purchases of SO₂ allowances and how those avoided purchases would affect the costs of the Scrubber. Our investigation of the Scrubber and PSNH's prudence in incurring those costs is the purpose of the instant proceeding. We find that the answer to TC 2-3 may result in relevant information that could be admitted as evidence in the proceeding and, therefore, we grant the Motion as it relates to TC 2-2. We require PSNH to provide as a response all presentations, data or other documents, that it shared regarding how the costs of the Scrubber would be affected by the avoided SO₂ allowance purchases.

The next three data requests that are included in TransCanada's Motion are TC 2-4, TC 2-5 and TC 2-6. The data requests are as follows.

TC 2-4:

Is it true today that the costs of the scrubber project will be fully mitigated by the savings in SO₂ allowances?

Response:

PSNH objects to this question, as it requires speculation. Notwithstanding this objection PSNH responds as follows:

It is impossible to predict what the value of SO₂ allowances will be in the future. It is true that the reduced costs to PSNH's customers by not needing to purchase SO₂ allowances will help mitigate scrubber costs. This benefit has changed over time as SO₂ allowance prices have decreased in recent years and will change in the future.

TC 2-5:

If the costs of the scrubber project will not be fully mitigated by the savings in SO2 allowances, please state in detail when PSNH first became aware that this would be the case.

Response:

Please see the response to [TC 2-4].

TC 2-6:

Please provide any and all documentation and correspondence that PSNH or any of its employees, officials, representatives, agents or lobbyists had with or provided to any and all state officials with regard to the fact that the costs of the scrubber project would not be fully mitigated by the savings in SO2 allowances.

Response:

Please see the response to [TC 2-3 and TC 2-4].

PSNH requests that the Motion be denied as it applies to these three data requests because TransCanada's Motion does not discuss those questions, thus failing to specify the basis of the motion as required by N.H. Code Admin Rule Puc 203.09 (i)(3). We recognize this deficiency; however, because these questions may lead to relevant evidence and are matters of concern to the Commission, we will not deny the Motion for TC 2-4 through TC 2-6. To avoid having to revisit an issue that is before us with the present filings, we will defer ruling on TransCanada's Motion insofar as it relates to TC 2-4, TC 2-5 and TC 2-6 and provide TransCanada the opportunity to make a supplemental filing within 5 business days of this order that supports their arguments in favor of discovery. PSNH will have 5 business days in which to file an objection to TransCanada's supplement filing

Based upon the foregoing, it is hereby

ORDERED, that TransCanada's Motion to Compel is granted for TC 1-9, TC 1-10, TC 2-2; and TC 2-3; and it is

FURTHER ORDERED, that TransCanada's Motion to Compel is granted in part for TC 1-7; and it is

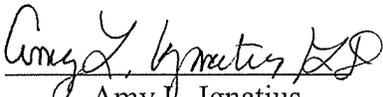
FURTHER ORDERED, that TransCanada's Motion to Compel is denied for TC 1-6, TC 1-8, and TC 1-11; and it is

FURTHER ORDERED, that TransCanada will be allowed 5 business days from the date hereof to supplement its Motion to specifically address why PSNH should be compelled to respond to TC 2-4 through TC 2-6 and PSNH shall have 5 business days to file an objection; and it is

FURTHER ORDERED, that the parties shall have until August 28, 2012, to file legal briefs addressing the interpretation of RSA 125-O:10 and RSA 125-O:17 as described herein; and it is

FURTHER ORDERED, that TransCanada's requests related to the variance issues are held in abeyance pending ruling, after review of briefs.

By order of the Public Utilities Commission of New Hampshire this seventh day of August, 2012.

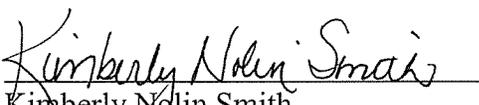


Amy L. Ignatius
Chairman



Michael D. Harrington
Commissioner

Attested by:



Kimberly Nolin Smith
Assistant Secretary

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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