

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

September 8, 2014 - 10:06 a.m.
Concord, New Hampshire

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RE: DE 11-250
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE:
Investigation of Scrubber Costs and
Cost Recovery. (Prehearing conference)

PRESENT: Chairman Amy L. Ignatius, Presiding
Commissioner Martin P. Honigberg
Special Commissioner Michael J. Iacopino
Sandy Deno, Clerk

APPEARANCES: Reptg. Public Service Co. of New Hampshire:
Barry Needleman, Esq. (McLane, Graf...)
Robert A. Bersak, Esq.

Reptg. TransCanada Power Marketing, Ltd.,
and TransCanada Hydro Northeast, Inc.:
Douglas L. Patch, Esq. (Orr & Reno)
Rachel Goldwasser, Esq. (Orr & Reno)

Reptg. Conservation Law Foundation:
Ivy L. Frignoca, Esq.

Reptg. Residential Ratepayers:
Susan Chamberlin, Esq., Consumer Advocate
Office of Consumer Advocate

Reptg. PUC Staff:
Michael J. Sheehan, Esq.
Thomas C. Frantz, Director/Electric Division

Court Reporter: Steven E. Patnaude, LCR No. 52

ORIGINAL

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Mr. Bersak 12, 13, 14

Ms. Goldwasser 13, 14

QUESTIONS BY:

Chairman Ignatius 5, 6, 15, 16, 18

Cmsr. Honigberg 17

P R O C E E D I N G

CHAIRMAN IGNATIUS: We are here today in the Docket DE 11-250, which is Public Service Company of New Hampshire's request for recovery of its investment costs in the Scrubber technology. And, at the outset, I want to let you know that we have just now issued an order in another matter in this docket regarding OCA's five motions to strike testimony. We have copies of those available. And, maybe I'll ask the Clerk to distribute them, but you'll need time to read through before your tech session. You don't need to read it through for the purpose of this hearing this morning. But maybe just get those circulated to people, because at one point we will refer to that order. And, that's Order Number 25,714.

(Ms. Deno distributing documents.)

CHAIRMAN IGNATIUS: Thank you. The purpose of the prehearing conference this morning is to address discovery matters. What I'd like to do is first take appearances, and then give you a sense of the game plan of what we're going to be doing this morning, and go through the discovery issues. And, then, we will adjourn the prehearing conference, the formal portion, and I understand that a technical session will follow from that. And, you're welcome to spend as long as it takes to be

1 fruitful. And, throughout this process, appreciate all of
2 the work that people are doing to try to narrow issues
3 where possible.

4 So, let's begin first with appearances.

5 MR. BERSAK: Good morning,
6 Commissioners. Robert Bersak, here for Public Service
7 Company of New Hampshire, along with Barry Needleman, from
8 the McLane law firm.

9 CHAIRMAN IGNATIUS: Good morning.

10 MR. PATCH: Good morning. Doug Patch
11 and Rachel Goldwasser, from Orr & Reno, on behalf of
12 TransCanada Power Marketing, Limited, and TransCanada
13 Hydro Northeast, Inc.

14 CHAIRMAN IGNATIUS: Good morning.

15 MS. FRIGNOCA: Good morning. Ivy
16 Frignoca, on behalf of the Conservation Law Foundation.

17 CHAIRMAN IGNATIUS: Good morning.

18 MS. CHAMBERLIN: Good morning. Susan
19 Chamberlin, Consumer Advocate for the residential
20 ratepayers.

21 CHAIRMAN IGNATIUS: Good morning.

22 MR. SHEEHAN: Good morning. Michael
23 Sheehan, for Staffs of the Public Utilities Commission,
24 with Tom Frantz, the Director of the Legal -- I'm mean,

1 the Electric Division.

2 CHAIRMAN IGNATIUS: Welcome, everyone.

3 As I said before, this morning's prehearing conference is
4 to talk about discovery issues. One of the useful
5 functions of a prehearing conference is to keep things
6 moving, try to address what we can, get everyone together,
7 and let you know, without waiting for a formal order on
8 some of these matters, to give you an understanding of
9 where we stand, and give you guidance in further
10 preparations to get to hearings. We are due to go to
11 hearing in October. And, we're doing everything we can to
12 keep that schedule on track, and we appreciate all efforts
13 of parties to do as well.

14 What I'd like to do right now is just
15 confirm a couple of things to be sure that our
16 understanding is correct as to the status of some of the
17 discovery issues, and then move to rulings on the pending
18 discovery matters. And, in a couple of cases, ask for
19 positions of parties on a few of the open matters that we
20 have not yet resolved.

21 On confirming where we stand, it's my
22 understanding from pleadings that the OCA's issues
23 regarding motions to compel have been resolved, is that
24 correct?

1 MS. CHAMBERLIN: That's correct.

2 CHAIRMAN IGNATIUS: Thank you. And,
3 thank you to all for finding ways to resolve those
4 matters.

5 On the TransCanada issues, we have just
6 received a new filing made Friday afternoon, which we've
7 reviewed, that takes some further action on some of the
8 disputed discovery requests. And, Mr. Patch, in the
9 motion you describe withdrawal of a number of questions,
10 the motion to compel on a number of questions. And, for
11 the sake of today, everything is "6-" something, can we
12 just dispense with the six and just go to the numbers?
13 Then, we have 37, 62, 93, 94, 134, 137, 152, 158, 174, and
14 195 is all being withdrawn, correct?

15 MR. PATCH: Yes.

16 CHAIRMAN IGNATIUS: All right. Then,
17 there are a couple of that are sort of partial resolution
18 and still open that you address in your motion. And, so,
19 we'll address those as we go through.

20 Are there any others that have been
21 withdrawn that we should know about?

22 (No verbal response)

23 CHAIRMAN IGNATIUS: All right. Then,
24 what I'd like to do is go through the rulings that we have

1 made, describing for you by number and just in a very
2 cursory way what the ruling is, the reason why we've made
3 that ruling. So, please keep good notes on this as I go
4 through them. A written order is going to follow. But,
5 for the purpose of today's hearing and for -- the
6 prehearing conference and for your tech session, I think
7 the more you are able to keep track the better. And, if
8 you get lost in what I'm going through, please give me a
9 wave and I'll go back through it again.

10 The first group of questions had to do
11 with a request to Mr. Smagula and the combined testimony
12 of Mr. Large, and is it pronounced "Vancho", "Mr. Vancho"?

13 MR. BERSAK: Yes. Mr. Vancho.

14 CHAIRMAN IGNATIUS: Thank you. In the
15 motions to compel 38, 39, 208, and 209, the PSNH objection
16 to that was "we shouldn't have to do this, because
17 TransCanada didn't answer similar questions." And, we do
18 not take that as a sound basis to deny a motion to compel.
19 It seems to me those are independent issues. And, we will
20 grant the motion to compel on those four questions.

21 On Questions 47 and 50, regarding
22 discovery from Mr. Smagula on Merrimack Station's recent
23 operations, PSNH's view is that those were irrelevant, we
24 will deny the motion to compel in those two instances.

1 And, some of those, the reasoning you'll see addressed in
2 the motion to strike that was just -- the order on the
3 motion to strike that was just issued.

4 On Question 96 to Mr. Reed, regarding a
5 study of his firm on a coal plant in Ohio, the motion is
6 granted, as it may be possible impeachment. We are,
7 again, still in the discovery phase. On Question 125 to
8 Mr. Reed, the motion to compel is granted.

9 Questions addressed to Mr. Harrison and
10 Kaufman, and I know some are doctors and some are misters,
11 and I'll just apologize at the outset and not worry about
12 it anymore. The Question 153, the motion to compel is
13 granted, as facts that were relied upon by experts.

14 Question 160, regarding uncertainties of
15 the 2008 and '09 period, the motion to compel is denied
16 and granted in part. So, let me go through this. It's
17 denied as to the first question, which asked "how much was
18 known", that seemed to us, as phrased, was an unanswerable
19 question. It's granted as to the second part of the
20 question, which specifically asked for the documents that
21 were reviewed.

22 In Question 171, regarding information
23 available to NERA, or to the witnesses, that motion is
24 granted, as it relates to information in your possession.

1 We took the phrase "available to you" to mean "in your
2 possession", as opposed to a broader sense of "available
3 to you out in the world".

4 Question 172, the motion to compel is
5 granted as possible impeachment of the witness. Question
6 183, the motion to compel is granted.

7 There are some motions that were filed
8 because of a view of TransCanada the responses were
9 inadequate. They had been partially answered. So, we'll
10 address those. Question Number 40, this relates to
11 something that we have ordered to be struck, stricken,
12 stricken, whatever the word is, we agree to strike that
13 testimony from the rebuttal testimony. And, so,
14 therefore, the motion to compel is denied.

15 CMSR. HONIGBERG: Let me clarify that a
16 little bit. It's there were two keys for that question.
17 One was testimony that's been struck, the other is
18 testimony that we're largely going to ignore. So, it's
19 not technically struck, but you will understand what that
20 means when you see the order on the motion to compel.

21 CHAIRMAN IGNATIUS: Thank you. I
22 appreciate that. Question 210. Question 210 is one that
23 we're going to ask the parties to discuss, after I get
24 through these rulings, and take a little bit more argument

1 on, because we weren't entirely clear from the record
2 where things stood.

3 Question 149, we will grant the motion
4 to compel, as it relates to documents in the possession of
5 NERA. Again, the phrase "available to you", we are going
6 to take to mean "in the possession of". And, so, to the
7 extent the question is "documents in possession", we will
8 grant that request.

9 Question 157 has been partially
10 responded to. We found the response to be adequate, and
11 the motion to compel is denied.

12 Question 192, regarding the analysis of
13 capital investment projects, we will set aside and take
14 further discussion on this morning.

15 There was a second motion to -- from
16 TransCanada regarding discovery that I also want to take
17 up, and that had just a few questions that were raised.
18 The first, regarding Senate Bill 152 that was introduced
19 in 2009, Question -- excuse me, Request 12 and 14, we will
20 deny the motion to compel for 12 and 14, as the
21 information that would be brought about by a response, in
22 our view, is too speculative in what the Legislature might
23 have done is for none of us really to know, and,
24 therefore, seemed inadmissible or would not lead to

1 admissible evidence.

2 Question 105 to Mr. Reed, we will grant
3 the motion to compel, to the extent it seeks a "yes" or
4 "no" answer, seemed appropriate in that light, but we will
5 not grant it to allow for any discussion beyond a "yes" or
6 a "no", because it seemed to me that goes again into the
7 area of speculation and would not lead to admissible
8 evidence.

9 Question 252 to Dr. Shapiro, we will
10 deny the motion to compel.

11 And, so, I think that leaves us with two
12 questions, 210 and 192, to take up right now.

13 CMSR. HONIGBERG: I want to say
14 something quickly about 105. To the extent that the
15 answer that Reed -- that Mr. Reed would want to give would
16 explain a "yes" or "no" answer, he can do that. But, to
17 the extent that the question was looking for other
18 information, it really is a "yes" or "no" question, and he
19 can either answer that or not, he can either answer "yes"
20 or answer "no". And, if he needs to explain it, he can.
21 But that's not being compelled to engage in any further
22 discussion on that, I guess is how we would phrase that.

23 CHAIRMAN IGNATIUS: Thank you. That's a
24 good clarification. I appreciate that. So, on 210 and

1 192, Mr. Patch, why don't I first ask you, to take in
2 whichever order you prefer, to lay out again what it is
3 that you're seeking, and then we'll give PSNH an
4 opportunity to respond.

5 MR. BERSAK: Madam Chair, perhaps I can
6 simplify this a bit. I think the issue, if I'm not
7 mistaken, on Number 210, was whether we provided responses
8 from affiliates of PSNH or the parent company. And, it
9 was the intention when he provided the response to that
10 that, yes, that was a response from the entirety of
11 Northeast Utilities. So, if that's the only issue that's
12 outstanding, with that clarification, perhaps that
13 question is resolved as well.

14 CHAIRMAN IGNATIUS: Well, that's
15 helpful. We had seen that there was a reference to
16 removing the objection, but didn't see any supplemental
17 response, and so thought it had not been answered. So,
18 your clarification is that the answer that was given to
19 210 is equally applicable to PSNH affiliates and parent
20 company?

21 MR. BERSAK: Correct. And, to be even
22 more precise, since Question 40 and 210 were basically the
23 same question, we answered 40 and said -- and provided a
24 substantive response, and then said, for Number 210, "See

1 40." So, both those questions have been responded to.

2 CHAIRMAN IGNATIUS: All right. Thank
3 you. Mr. Patch, anything you feel, or Ms. Goldwasser,
4 need to add to that?

5 MS. GOLDWASSER: No. And, just to be
6 clear, TC-40 only --

7 (Court reporter interruption.)

8 MS. GOLDWASSER: TC-40 only indicates
9 what PSNH had in its possession. So, to the extent that
10 Mr. Bersak is indicating on the record that -- that the
11 parent and affiliates of PSNH had no information with
12 respect to the economic viability of coal plants in the
13 ISO-New England area during the time period requested,
14 then, so be it.

15 MR. BERSAK: That is correct.

16 CHAIRMAN IGNATIUS: Then, on Question
17 192, regarding capital investments, and I think there's
18 been some effort among the parties to reduce the scope of
19 that question and make it a little more focused. As I
20 understand from the motion filed -- or, excuse me, the
21 pleading filed Friday afternoon, TransCanada has a
22 slightly more limited request. And, I don't know if
23 you've had a chance yet to discuss that with PSNH. Mr.
24 Patch or Ms. Goldwasser, why don't you tell us where you

1 stand on that.

2 MS. GOLDWASSER: We sent Mr. Bersak that
3 limited request, as was indicated, in the motion on
4 Friday. And, we haven't heard a response back. But,
5 again, it was merely last Friday.

6 CHAIRMAN IGNATIUS: All right. Mr.
7 Bersak.

8 MR. BERSAK: Attorney Goldwasser is
9 correct. We did receive an e-mail from TransCanada
10 shortly before noon on Friday to try to give more details
11 as to what they were looking for for this question. We
12 discussed this question at the technical session that had
13 been convened on the -- I believe it was the 18th of
14 August, and there was difficulty trying to place
15 appropriate limits on what a good response would be. And,
16 as we indicated in our objection, the question itself
17 originally asked was very broad. "All capital projects",
18 and there's literally tens of thousands of them if you
19 include transmission, distribution, everything. And, we
20 limited that, we said how many dealing with our fossil
21 plants, there were still a thousand or more. After
22 discussions at the technical session, there was no real
23 discourse back and forth. So, we did our best effort.
24 And, we found and we came up with the two projects to

1 which we responded, which were the only two that were of a
2 level of significance that went through the higher level
3 of scrutiny at the Company for, you know, high capital
4 projects. And, those two projects were the new coal
5 unloader at Schiller Station and the new high
6 pressure/intermediate pressure turbine at Merrimack 2.
7 And, we provided responses to the questions for those two
8 projects, which are the only ones that even came close to
9 being relevant to what we thought they were looking for.
10 So, we thought that the response that we gave was
11 complete.

12 CHAIRMAN IGNATIUS: So, let me ask
13 TransCanada why that's not sufficient? Why do you feel
14 you need more than those two projects?

15 MS. GOLDWASSER: They didn't -- they
16 identified two projects. And, we could have additional
17 conversation about whether, for example, they undertook
18 any non-fossil fuel projects that might have met that
19 standard. But they didn't provide with the level of
20 detail required to be able to consider those projects and
21 compare them with the analysis that they did with the
22 Scrubber. They merely provided a paragraph, Paragraph
23 (c), indicating some of the assumptions they provided for
24 one of the two projects. Now, Attorney Bersak just now

1 indicated it sounds like these two projects went through
2 the CaPP process, which PSNH has provided some
3 documentation about in discovery, which is the process by
4 which the parent considers the investment and whether it
5 makes sense and considers the assumptions.

6 So, it sounds as though there are
7 additional assumptions available, and there is additional
8 analysis that could be considered, but that information
9 has not been provided to date.

10 CHAIRMAN IGNATIUS: And, why do you need
11 more than the two? I understand your question about
12 detail on the two that have been submitted, but are you
13 still looking for five projects?

14 MS. GOLDWASSER: Well, I'm asking the
15 question. Attorney Bersak indicated that there were two
16 fossil fuel projects that were -- that met this, the
17 standard, for I presume what he means is the \$10 million
18 standard for CaPP. I don't know if that's true, if that's
19 the standard he's indicating. But, if it's true that
20 there were renewable projects that went through that
21 analysis, then, by my mind, that would meet the same
22 standard. We narrowed -- we considered narrowing to
23 fossil fuel, because PSNH indicated that they had over a
24 thousand projects that they would have to provide us

1 information about, not because we are only interested in
2 one type of project. We were trying to help them narrow.

3 CHAIRMAN IGNATIUS: Commissioner.

4 CMSR. HONIGBERG: I guess, Mr. Bersak,
5 are there other projects that were that large, over
6 \$10 million, during the time period they we're asking
7 about, which is 2006 to 2010?

8 MR. BERSAK: Not that I am aware of.
9 You know, we certainly have not developed any kind of
10 renewable projects since the conversion of Schiller 5,
11 which is outside the time frame that was asked for
12 relevant for this question. The plant that was built up
13 in Berlin is not ours. So, it wouldn't fit this criteria.
14 Nor would Lempster Wind be ours, so that wouldn't fit this
15 criteria. And, we made a good faith effort to try to find
16 what was responsive, and this is what we came up with.

17 CMSR. HONIGBERG: Okay. Are there other
18 types of projects that might be in the 5 to \$10 million
19 range that would expand the field somewhat?

20 MR. BERSAK: I do not know. And, what I
21 was told was that projects of that level wouldn't have
22 gone through the type of analysis that they're seeking the
23 information on.

24 CMSR. HONIGBERG: Okay. Now, let me go

1 to the second half of the concern that TransCanada has,
2 which is that the level of documentation you provided is
3 not what they would like to see. I'm inclined to agree
4 that there must be more documentation that was developed
5 in-house in analyzing the wisdom of going forward with
6 these large expenditures. I mean, are those files you can
7 access and review to see what kind of analysis are in
8 there, to see what might be appropriate to produce in
9 response to this question?

10 MR. BERSAK: Yes, we can do that.

11 CMSR. HONIGBERG: That makes sense to me
12 as something that would help.

13 MR. BERSAK: Okay.

14 (Chairman and Commissioners conferring.)

15 CHAIRMAN IGNATIUS: Ms. Goldwasser, the
16 response that Mr. Bersak made, does that resolve your
17 concerns to make that level of documentation available?

18 MS. GOLDWASSER: Yes. Thank you.

19 CHAIRMAN IGNATIUS: Then, is there
20 anything else on Question 192 that we need to resolve or
21 is that something that sounds like is being worked out
22 among the two of you?

23 MS. GOLDWASSER: We'll work it out.
24 Nothing.

1 CHAIRMAN IGNATIUS: That's one of those
2 compound questions that a "yes" or a "no" neither is a
3 good answer.

4 MR. BERSAK: Yes.

5 CHAIRMAN IGNATIUS: Sorry about that.
6 All right. Thank you. I don't believe we have any other
7 motions to compel that are open and need to be resolved.
8 Is there anything that I've skipped over?

9 (No verbal response)

10 CHAIRMAN IGNATIUS: All right. Well,
11 that's good to see that no one is raising their hand.

12 Then, our understanding is the next
13 thing up would be for all of you to work to continue to
14 advance the discovery and understanding of the testimony
15 in a technical session outside of the presence of the
16 Commissioners. And, we will get a written order on the
17 discovery rulings that we've made this morning, but
18 hopefully that's helpful to you in narrowing your
19 discussion today to already have those determinations, and
20 as well as the order on the OCA motions to strike.

21 I do want to thank everybody for, first
22 of all, for coming up here today, and for really trying to
23 get to a resolution that's workable for everybody to come
24 forward in the hearings. We don't expect everything to be

1 resolved by the start of the hearing date, and that's not
2 our goal, but that we have as clean a set of issues to
3 address, and give us all the opportunity to work through
4 those in a way that's thorough, fair, and provides clarity
5 of the record. So, we appreciate your efforts.

6 And, we are adjourned.

7 **(Whereupon the prehearing conference was**
8 **adjourned at 10:32 a.m., the parties**
9 **held a technical session thereafter.)**