

**TATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 11-250**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**Investigation of Scrubber Costs and Cost Recovery**

**Order Denying PSNH's Motion to Reconsider Order No. 25,687**

**ORDER NO. 25,697**

**July 28, 2014**

In this order we deny PSNH's motion to reconsider Order No. 25,687 (July 2, 2014), which denied PSNH's motion to rescind the intervenor status of two TransCanada companies, struck portions of Mr. Hachey's testimony, and stated that we may draw adverse inferences regarding information TransCanada did not produce. PSNH did not present new evidence and did not identify specific matters that we overlooked or mistakenly conceived.

**I. PROCEDURAL HISTORY**

This docket considers the prudence of the costs and cost recovery for the wet flue gas desulfurization system (Scrubber) installed by Public Service Company of New Hampshire (PSNH) at its coal-fired generation plant known as Merrimack Station.

The Commission granted TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast, Inc. (the TransCanada Intervenors), intervenor status at the outset of this docket. A well-documented dispute arose between PSNH and the TransCanada Intervenors over data requests that PSNH directed at the testimony of Michael E. Hachey. The discovery litigation culminated with Order No. 25,671 (May 29, 2014).<sup>1</sup> That order denied the TransCanada

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<sup>1</sup> Since all orders cited here are styled *Public Service Co. of N.H.*, references will be to the order number and date.

Intervenors' motion to reconsider a prior order that compelled responses to four data requests. In violation of Order No. 25,671, the TransCanada Intervenors did not produce the documents.

Citing this refusal, PSNH filed a motion to rescind the status of the TransCanada Intervenors or to grant "such other relief as the Commission deems appropriate." We denied PSNH's primary request to exclude the TransCanada Intervenors, but we found that "alternative sanctions are appropriate." Order No. 25,687 at 4. We struck portions of Mr. Hachey's testimony and we stated that we may draw adverse inferences when appropriate concerning the information not produced by the TransCanada Intervenors. *Id.* at 10-11. PSNH filed a timely motion to reconsider.

## **II. POSITIONS OF THE PARTIES**

### **A. PSNH**

PSNH makes four arguments. PSNH first argues we erred in not rescinding the TransCanada Intervenors' status. In support of this argument PSNH incorporates its original motion to rescind: "PSNH will not repeat the arguments contained in the June 13, 2014, Motion." Motion to Reconsider at 5. PSNH's second argument is that we should strike all of Mr. Hachey's testimony. Third, PSNH argues we should apply the adverse inference now, in advance of the hearing. Motion to Reconsider at 6-13. Finally, PSNH argues we should strike more of Mr. Hachey's testimony under the standard we articulated in Order No. 25,687. PSNH provided a copy of Mr. Hachey's testimony with its proposed additional redactions.

### **B. TransCanada**

The TransCanada Intervenors objected to PSNH's motion on the grounds that PSNH did not satisfy the standard for reconsideration motions. They argued PSNH failed to state any good

cause for rehearing, or cite any matters that the Commission overlooked or mistakenly conceived. Objection at 2.

### **III. COMMISSION ANALYSIS**

The Commission may grant rehearing or reconsideration for “good reason” when the moving party demonstrates that the decision is “unlawful or unreasonable.” RSA 541:3, RSA 541:4; *see Rural Telephone Companies*, Order No. 25,291 at 9 (Nov. 21, 2011). Good reason may exist if there are matters that the Commission “overlooked or mistakenly conceived in the original decision,” *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citation omitted), or if the movant presents new evidence not previously available, *Hollis Telephone, Inc.*, Order No. 25,088 at 14 (Apr. 2, 2010). A motion for rehearing that merely restates prior arguments and asks for a different outcome will fail. *Public Service Co. of N.H.*, Order No. 25,168 at 10 (Nov. 12, 2010).

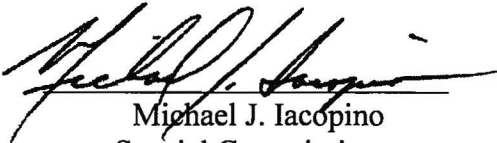
We find that PSNH did not meet the reconsideration standard. PSNH simply incorporated its prior argument to rescind the TransCanada Intervenors’ status without elaboration. We considered striking all of Mr. Hachey’s testimony but decided it was not appropriate. Order No. 25,687 at 5, 10. PSNH’s third argument that we should apply the adverse inference now is unpersuasive. It is inappropriate to draw inferences broadly and out of context. Finally, we carefully reviewed the additional redactions that PSNH proposed. We found no additional testimony that should be stricken. PSNH did not identify anything we overlooked or mistakenly conceived.

**Based upon the foregoing, it is hereby**

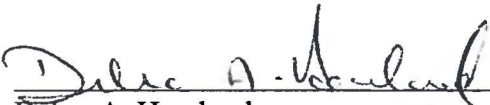
**ORDERED**, that PSNH’s Motion for Reconsideration of Order No. 25,687 is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of July, 2014.

  
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Martin P. Honigberg  
Commissioner


  
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Michael J. Iacopino  
Special Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director

**SEPARATE OPINION**

I would grant PSNH's Motion for Reconsideration of Order No. 25,687 to the extent that it requests that the Commission strike the entirety of Mr. Hachey's testimony. In other matters, I concur with the majority.

  
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Amy Ignatius  
Chairman