

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 11-250

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Investigation of Scrubber Costs and Cost Recovery

**Order Granting in Part and Denying in Part TransCanada's Motion Regarding
Outstanding Discovery**

ORDER NO. 25,735

November 20, 2014

In this Order, the Commission grants in part and denies in part the TransCanada Intervenors' motion to require PSNH to explain the steps it took to meet its discovery obligations. PSNH shall respond to this Order within 10 days.

I. PROCEDURAL HISTORY/POSITION OF THE PARTIES

This docket considers the prudence of the costs and cost recovery for the wet flue gas desulphurization system (Scrubber) installed by Public Service Company of New Hampshire (PSNH) at its coal-fired generation plant known as Merrimack Station. TransCanada Power Marketing Ltd. and Trans Canada Hydro Northeast Inc. (the TransCanada Intervenors) are intervenors in this proceeding. The Commission conducted a hearing in this matter that closed on October 23, 2014. On October 31, 2014, the TransCanada Intervenors filed a Motion Regarding Outstanding Discovery (Motion). PSNH objected on November 5, 2014.

A. TransCanada

In its Motion, the TransCanada Intervenors request that the Commission require PSNH to detail the efforts it made in seeking documents responsive to the TransCanada Intervenors' request for "price forecasts ... produced by or available to PSNH, its affiliates, or parent

company from 2008 through 2011.” The TransCanada Intervenors state that their requests for relief will assist the Commission in deciding whether PSNH met its discovery obligations during this proceeding. Motion at 1.

The Commission compelled PSNH to provide the price forecast information in Order No. 25,445 (Dec. 24, 2012) and Order No. 25,718 (Sept. 17, 2014) in this docket. PSNH provided some responsive documents during discovery and prior to hearing. During the merits hearing, however, PSNH introduced Exhibit 73, PSNH’s 2007 least cost integrated resource plan (LCIRP), which referenced energy price forecasts prepared by Energy Ventures Analysis (EVA). Up until that time, PSNH had only produced one EVA forecast. Exhibit 73 states that EVA provided PSNH long-term energy price forecasts on a quarterly basis. The TransCanada Intervenors also introduced a report by Yankee Gas, a PSNH affiliate, filed with the Connecticut Public Utilities Regulatory Authority that included EVA forecasts. Exhibit 37.

The TransCanada Intervenors pointed out that PSNH produced only five pages of natural gas forecasts during the course of discovery, which appeared inconsistent with the information in Exhibits 37 and 73. Motion at 3, 5. The TransCanada Intervenors requested during the hearing that the Commission order PSNH to comply with its obligation pursuant to New Hampshire Code Admin. Rule Puc 203.09(k) to supplement responses to discovery as needed. Tr. day 2, a.m., at 9-10. The Company stated that it would again inquire about the existence of any additional EVA energy price forecasts for the period in question. *Id.*

On Friday, October 17, 2014, PSNH provided the parties scanned copies of additional EVA forecasts. The TransCanada Intervenors stated that the forecasts were not quarterly (as indicated in Exhibit 73) and contained no narrative (as did the EVA reports in Exhibit 37). Tr. day 5, a.m., at 5-9. PSNH provided even more forecasts to the parties on Monday,

October 20, 2014, that were apparently included in presentations at Northeast Utilities (PSNH's parent company) and Yankee Gas. Motion at 6. PSNH explained that its failure to initially locate these documents resulted from its inability to search for documents electronically. *Id.*

The TransCanada Intervenors argue that it remains unclear whether the information that was produced by PSNH is complete and includes all responsive documents held by PSNH affiliates during the relevant time periods. By way of relief, the TransCanada Intervenors request that the Commission "consider what steps PSNH took to meet its discovery obligations, given the above-referenced facts, circumstances, and questions." Motion at 9. Specifically, the TransCanada Intervenors ask that PSNH be required to provide the following:

- A. A full and clear description of each step PSNH took to respond to the data requests at issue, including the names and titles of all individuals involved in reviewing the data requests, gathering information to respond to the requests, providing answers to questions relating to the data requests, and developing responses to the data request at issue. In addition, PSNH should provide a summary of each person's involvement in development of discovery responses and/or the search for and production of relevant materials;
- B. A full and clear description of the electronic document search that was conducted for forecasts held by PSNH, Northeast Utilities, and PSNH's affiliates, and, if an electronic document search was not conducted, an explanation of why that did not occur;
- C. Produce cop(ies) of any contract that PSNH, Northeast Utilities, or any PSNH affiliate held with EVA or any other vendor for energy forecasting information;
- D. If in fact the contract calls for quarterly forecasts to be provided to PSNH as indicated in the LCIRP an explanation of why PSNH has only produced two sets of tables for 2008;
- E. An explanation of why the information that was produced does not resemble Tr. Ex. 36;
- F. Produce a copy of any document retention policy that would apply to PSNH, Northeast Utilities, and any PSNH affiliate; and

G. If PSNH claims that the relevant documents were destroyed, a full and clear explanation of what documents were destroyed, who destroyed them, and when they were destroyed.

Id. The TransCanada Intervenors state that once this information is available, the Commission can determine whether any further steps are required.

B. PSNH

PSNH characterizes the TransCanada Intervenors' motion as a restatement of a previous motion made during the hearing that was denied by the Commission, and argues that the Commission should treat the pending Motion as a motion for rehearing under Puc 203.33. Because the TransCanada Intervenors did not state any new evidence or matters overlooked by the Commission as required by Puc 203.22, PSNH argues that the Motion should be denied. Objection at 1.

PSNH claims that the Motion seeks to revisit PSNH's oral response during the hearing to questions regarding fuel price forecasts available to PSNHN directly or from its affiliates during the relevant time period. PSNH says it had previously explained on the record why the EVA forecasts were not produced as a result of its initial search, and that its October 21, 2014, letter documented its efforts in that regard. PSNH insists that it had not withheld any EVA forecasts to the best of its knowledge and has no other EVA forecasts to produce.

PSNH argues that the obligations of Puc 203.09 apply to all parties to this proceeding and not just to PSNH. The Company states that the TransCanada Intervenors' status as intervenors does not exempt them from complying with the requirements of the rules, and that the TransCanada Intervenors have made no effort to obtain energy price forecasts from its affiliated companies.

PSNH states that it takes its discovery obligations seriously and that it acted in good faith, with no malice, and did not intentionally refuse to produce discovery material. PSNH asks that the Commission deny the Motion as it did from the bench during the hearing.

II. COMMISSION ANALYSIS

This controversy over PSNH's production of price forecasts is a continuation of discovery disputes that occurred in the prior phase of this proceeding. As noted by both the TransCanada Intervenors and PSNH, we previously determined that energy price forecasts held by PSNH and its affiliates for the period 2008 through 2011 are relevant in this proceeding.

We appreciate that PSNH's obligation to produce relevant documents required it to work around the limitations of its electronic data base. PSNH's inability to produce responsive documents during discovery, however, merits additional inquiry. Although PSNH's counsel described discovery efforts at hearing, we believe that the parties and the Commission would benefit from a more detailed explanation of what PSNH did to search for energy price forecasts. Therefore, we grant the TransCanada Intervenors' motion and require PSNH to provide information that responds to requests for relief A, B, C, F, and G. *See page 3, infra.* We deny the request that PSNH explain the frequency of the EVA reports, request D, and the format of the information, request E, because responses to these two paragraphs will not provide insight into PSNH's discovery efforts.

We require PSNH to provide responsive information within 10 days of this Order. In granting the Motion in part, we take no position regarding the adequacy of PSNH's search.

Based upon the foregoing, it is hereby

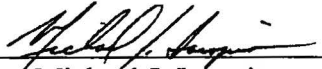
ORDERED, that TransCanada's Motion is granted with respect to requests A, B, C, F, and G and denied with respect to requests D and E; and it is

FURTHER ORDERED, that PSNH shall comply with to this Order within 10 days.

By order of the Public Utilities Commission of New Hampshire this twentieth day of
November, 2014.

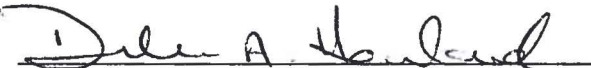


Martin P. Honigberg
Commissioner



Michael J. Iacopino
Special Commissioner

Attested by:



Debra A. Howland
Executive Director