

**STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION**

Docket No. DE 11-250

Public Service Company of New Hampshire

Investigation of Merrimack Station Scrubber Project and Cost Recovery

**CONSERVATION LAW FOUNDATION AND SIERRA CLUB'S OBJECTION TO
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S
MOTION FOR REHEARING OF ORDER 25,445**

NOW COME the Conservation Law Foundation and Sierra Club ("CLF/SC"), intervenors in this docket, and hereby object to Public Service Company of New Hampshire's ("PSNH") Motion ("Motion") for Rehearing of Order No. 25,445, dated January 23, 2013 pursuant to Admin. Rule PUC 203.07(f). In support of this Objection, CLF/SC state as follows:

1. In Order No. 25,445 (the "Order"), issued on December 24, 2012, the Commission ruled on several motions to compel responses to data requests filed by TransCanada that were not addressed in Order No. 25,398, in which it had solicited briefs from the parties on the remaining issues. On August 28, 2012, CLF/SC filed a brief addressing the scope of discovery in this proceeding and the implicated statutory provisions ("CLF/SC Brief").

2. On January 23, 2012 PSNH filed a Motion for Rehearing of Order No. 25,445. PSNH's lengthy, rambling Motion largely rehashes arguments it previously raised and which were addressed by the Order, and nowhere points to a clear error of law made by the Commission. In effect, it merely reasserts prior arguments seeking a different outcome and thus PSNH has failed to meet its burden in establishing that the extraordinary remedy of rehearing is appropriate. *Connecticut Valley Electric Co.*, 88 NH PUC 355, 356 (2003).

3. In light of New Hampshire's liberal view of discovery, PSNH is unable to make a valid argument against disclosure. As the CLF/SC Brief and Order No. 25,445 stated, requests for information relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence are allowed liberally in New Hampshire, checked only by privilege and "control to prevent harassment." CLF/SC Brief at 2, *citing* Yancey v. Yancey, 119 N.H. 197, 198 (N.H. 1979); Order No. 25,445 at 22-23. This standard effectively requires a party before the Commission seeking to avoid responding to a data request to allege privilege, harassment, or utter irrelevance.

4. PSNH's Motion does not raise privilege, or harassment. Instead, it argues its perspective on the facts. For example, according to PSNH (Motion at p. 27) the project could not be put on pause, "while the economics of it are reassessed and a variance considered." Indeed, these are precisely the types of considerations / assertions that discovery is designed to illuminate, rather than be pre-judged based on PSNH's view of the facts. New Hampshire's liberal standard and discovery's role as a pre-adjudication fact-gathering process renders PSNH's arguments as to the proceeding's ultimate determination irrelevant, and the Commission was careful to point out, in the Order, that it is not prejudging the outcomes at issue in this proceeding. Forcing the proponent of a discovery request to litigate the ultimate issues of the case or the exact use of the information sought would render meaningless discovery's purpose of uncovering evidence "reasonably calculated" to be admissible.

5. Since the conclusions of the Commission's Order No. 25,445 are consistent with the standard for discovery in proceedings before the Commission, and since PSNH's Motion does not contradict the Commission's holding in Order No. 25,445, PSNH's Motion should be denied.

WHEREFORE, CLF/SC respectfully requests that the honorable Commission:

- A. Deny PSNH's Motion for Rehearing; and
- B. Grant such other relief as it deems appropriate.

Respectfully Submitted,

/s/ Zachary M. Fabish
Zachary M. Fabish
Attorney for the Sierra Club
50 F Street NW, 8th Floor
Washington, D.C. 20001
(202) 675-7917
zachary.fabish@sierraclub.org



N. Jonathan Peress
Conservation Law Foundation
27 N. Main Street
Concord, NH 03301
(603) 225-3060
njperess@clf.org

Dated: January 30, 2013

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of January 2013, a copy of the foregoing Objection to PSNH's Motion for Rehearing Order No. 25,445 was sent electronically or by First Class Mail to the service list.



N. Jonathan Peress
New Hampshire Advocacy Center
Conservation Law Foundation
27 North Main Street
Concord, New Hampshire 03301-4930
Tel.: (603) 225-3060
Fax: (603) 225-3059
njperess@clf.org

Dated: January 30, 2013