

**THE 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

**OBJECTION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
TO TRANSCANADA'S
MOTION REGARDING OUTSTANDING DISCOVERY**

Pursuant to Puc 203.07(e), Public Service Company of New Hampshire ("PSNH" or the "Company") hereby objects to the Motion Regarding Outstanding Discovery dated October 31, 2014, filed by TransCanada (the "Motion").

1. The stated purpose of TransCanada's Motion is "to determine whether PSNH met its discovery obligations during the pendency of this proceeding" regarding the provision of "certain forecasting information held by PSNH as well as its parents and affiliates." (Motion at ¶1). The Motion repeats a previous motion TransCanada made in this proceeding that the Commission denied. As such, the Motion should be considered to be a motion for rehearing under Rule Puc 203.33; a rehearing motion that fails to assert any new evidence or matters that were previously "overlooked or mistakenly conceived." The Commission has held throughout this proceeding that, "A motion for rehearing that merely restates prior arguments and asks for a different outcome will fail" (*see e.g.*, Order. No. 25,697, July 28, 2014, at 3; Order No. 25,671. May 29, 2014, at 3), and "A successful motion for rehearing does not merely reassert prior

arguments and request a different outcome” (*see e.g.*, Order No. 25,361, May 11, 2012, at 5; Order No. 25,546, July 15, 2013 at 6).

2. During the first day of hearings recently held in this docket, TransCanada made a motion asking the Commission to consider sanctions against PSNH based upon the same discovery matters that are the subject of the instant Motion. (T1AM/110/20).¹ TransCanada alleged that PSNH failed to exercise good-faith in responding to discovery because there were responsive documents possessed by affiliates of PSNH that “apparently weren’t sought” by PSNH as part of its search for responsive documents. (T1AM/112/17). The Commission immediately determined that there was no support for that allegation of TransCanada. (T1AM/113/9). After deliberating that motion overnight, the Commission denied TransCanada’s hearing motion from the bench (T2AM/5/6), holding “there’s no basis to grant the relief.” (T2AM/5/7). After further argument following that denial, the Commission noted, “that this is not really significant to the merits of this case” (T2AM/9/3) and “[t]hey [PSNH] have an obligation to supplement, if they locate additional documents, which they understand. And, if they find something else, they will produce it.” (T2AM/9/9).

3. On October 17, 2014, TransCanada again raised the same discovery issues via a letter filed with the Commission seeking the same relief as the instant Motion. PSNH responded in writing to TransCanada’s letter on October 21, 2014, and incorporates that response herein. PSNH also responded to similar inquiries during the course of the hearings in this proceeding. Those responses are part of the record, and are similarly incorporated herein.

¹ References to the hearing transcripts shall be made in the following format: (T[Hearing Day #][AM or PM]/Page/Line).

4. The purpose of this proceeding is to determine the prudent costs of PSNH's compliance with the Scrubber Law. RSA 125-O:18. During the course of this proceeding, PSNH has timely responded to thousands of questions, and has made available to the Parties many tens of thousands – and likely hundreds of thousands – of pages of responsive documents. PSNH believes it has acted in good faith throughout the proceeding and has met the Commission's requirements regarding discovery.

5. The instant Motion seeks to raise yet again PSNH's response to questions regarding fuel price forecasts available to PSNH directly or from its affiliates during the 2005 to 2011 time period. In the Motion, TransCanada specifically identifies price forecasts from Energy Ventures Analysis ("EVA") as ones that PSNH did not provide. As noted above, the facts surrounding the delayed provision of the referenced EVA forecasts have previously been the subject of a hearing motion in this proceeding that was denied. PSNH explained the reasons why the EVA forecasts that were held by PSNH or its affiliates were not originally located. (T1PM/6/4). As noted by the Commission from the bench, "I expect that, after yesterday's hearing, they [PSNH] got on the phone with their various affiliates and made sure that they had located every possible relevant document. And, I expect that, if PSNH locates any documents that would be called for under that request, they will be providing them to everyone." (T2AM/5/24). That is exactly what happened. PSNH took precisely what the Commission indicated were the reasonable and necessary actions, informed the parties on the record of those actions, located responsive documents, and immediately provided them to the parties. See Attachment 1 hereto, PSNH's October 17, 2014, discovery transmittal letter to the Parties.

6. PSNH has not withheld any EVA forecasts, and to the best of its knowledge, has no other EVA forecasts to produce. PSNH had and continues to have no reason to withhold the

EVA forecasts, any other fuel price forecasts, or any other information responsive to discovery in this proceeding. PSNH is proud of the efforts it made to comply with the requirements of the Scrubber Law. The Jacobs Consultancy review acknowledges the world-class effort the Company made to design, engineer, procure, and install the scrubber, resulting in the findings and recommendations from both Jacobs and Commission Staff that PSNH is entitled to full recovery of the costs of the scrubber project under RSA 125-O:18. There is no rational basis for PSNH to put such an investment in jeopardy over fuel price forecasts – especially forecasts available to the general public for purchase from a commercial vendor.²

7. The Commission’s general rule on discovery is set forth at Rule Puc 203.09. By its express terms, that Rule applies to the “petitioner, the staff of the commission, the office of consumer advocate and any person granted intervenor status...”. While TransCanada’s Motion points solely to PSNH, it must be remembered that all parties to this and other Commission proceedings have equal rights and responsibilities in the discovery process. TransCanada repeatedly points to PSNH’s status as the petitioner seeking “recovery of a \$422 million expenditure” as if that creates a heightened discovery obligation. (Motion at ¶1; *see also* T2AM/41/2; T4AM/114/11). While PSNH is indeed the petitioner, and PSNH indeed expended \$422 million to comply with the requirements of state law and is seeking recovery of that expenditure pursuant to that same state law, its status as the “petitioner” does not make its discovery obligations any different from that of every other party granted intervenor status.

8. During the recent hearings in this proceeding, TransCanada revealed the efforts it made to comply with its discovery obligation to produce gas price forecasts possessed by

² In fact, the EVA price forecast information that PSNH located and provided to the parties actually bolsters PSNH’s case, as the gas prices contained in the EVA forecast for the one relevant time period are higher than the forecasted prices previously known to PSNH.

affiliated companies – *none*.³ When TransCanada’s witness and vice president, Mr. Hachey, responded to an inquiry regarding who at TransCanada he asked about gas price information possessed by TransCanada, he responded, “TransCanada has 5,000 employees. Who do I ask?” (T4AM/84/6). Following up on that response, Mr. Hachey was asked whether he asked anyone at TransCanada about such gas price information. Mr Hachey responded, “I’m not quite sure of the value of asking everyone or anyone - -” (*Id.* at L. 9) and “I don’t recall asking.” (*Id.* at L. 17.) As the moving party, TransCanada’s own testimony regarding what it deemed to be reasonable discovery efforts should be taken into consideration.⁴

9. PSNH wants to make it clear that it does not take its discovery obligations lightly and that it acted in good-faith, with no malice, and did not intentionally refuse to produce responsive discovery material. According to Wiebusch On New Hampshire Civil Practice And Procedure, Fourth Edition (2014), in discovery, a party must “in general, attempt in good faith to give the opponent the information requested.” §22.25. That is precisely what PSNH did.

10. For all of the reasons stated above, PSNH requests that the Commission again deny the Motion, as it did from the bench during the hearing.

³ TransCanada infers that these EVA forecasts are crucial to its ability to participate in this proceeding – yet it never asked the very TransCanada companies for which Mr. Hachey is an officer or director whether they had those forecasts, and it similarly never asked TransCanada’s own corporate forecasting department whether they have these commercially available documents.

⁴ At the point in the proceedings when Mr. Hachey provided this testimony about TransCanada’s failure to make any effort whatsoever to comply with the Commission’s discovery orders, his counsel objected to further questions, stating, “We’re not doing discovery anymore; we’re in the hearing.” (T4AM/89/14). Apparently that position of TransCanada changed once its witness left the stand, as the Motion now seeks to go back to the very discovery process it argued was over.

Respectfully submitted this 5th day of November, 2014.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____

Robert A. Bersak
Chief Regulatory Counsel
Linda T. Landis
Senior Counsel

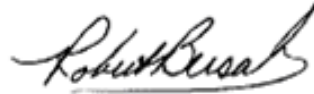
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Certificate of Service

I hereby certify that a copy of this Objection has been served electronically on the persons on the Commission's service list in accordance with Puc 203.11 this 5th day of November, 2014.

A handwritten signature in black ink, appearing to read "Robert Bersak", written over a horizontal line.

Robert A. Bersak

ATTACHMENT 1

PSNH's Transmittal Letter of October 17, 2014



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October 17, 2014

**TO: DISCOVERY SERVICE LIST
NHPUC DOCKET NO. DE 11-250**

RE: SUPPLEMENTAL RESPONSE TO DATA REQUEST TC 06-038

Per the discussion that ensued at the start of today's hearings, attached are forecasts from Energy Venture Analysis ("EVA") located by PSNH responsive to data request TC 06-038:

Request:

Reference your testimony concerning conclusions drawn by Legislators and the Public Utilities Commission regarding going forward with the Scrubber in spite of "higher costs" as well as your testimony on page 23 regarding fuel diversity. Please provide copies of any and all price forecasts for natural gas, electric and coal produced by or available to PSNH, its affiliates, or parent company from 2005 through 2014.

Response:

During the recent technical session, this response was updated to reflect a period through 2011.

I apologize again for not successfully locating these documents prior to today. As I explained following the lunch break at today's hearing, the identification of PSNH's reference to the EVA forecasts in the company's 2007 LCIRP was the key to tracking down these documents following employee retirements, company reorganizations, and geographic relocations.

As Mr. Hachey noted during his testimony today, trying to locate documents responsive to data requests when a company has thousands of employees (in the case of

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Northeast Utilities, over 8,000) is difficult. I stand by my statements that we made good-faith efforts to locate documents responsive to all data request questions in a timely manner.

Due to their size, I will be sending the documents out in three separate emails. If anyone has any difficulty receiving the documents, please feel free to call me over the weekend and I will remedy the situation. My cell number is 603-714-5407.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Busa". The signature is fluid and cursive, with a prominent flourish at the end.

SERVICE LIST - EMAIL ADDRESSES - DISCOVERY MATERIALS

Pursuant to N.H. Admin Rule Puc 203.09 (d) and 203.11 (a) (11) Electronic copies of all discovery shall be served on every person designated for discovery filings on the Commission's official service list. [Discovery shall not be filed as part of a docket filing pursuant to 203.02]

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:

DEBRA A HOWLAND
 EXECUTIVE DIRECTOR
 NHPUC
 21 S. FRUIT ST, SUITE 10
 CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.