

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 11-250

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Investigation of Scrubber Costs and Cost Recovery

Order on PSNH Motion to Compel

ORDER NO. 25,663

May 8, 2014

This order grants in part and denies in part PSNH's motion to compel TransCanada to provide supplemental responses to seven data requests. The disputed requests sought information from non-party affiliates of TransCanada relating to gas price forecasts, costs to install scrubber technology, and costs to build power plants.

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.

PSNH issued data requests in January 2014 to intervenors TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (TransCanada). The data requests defined "TransCanada" as "TransCanada Corporation and all subsidiary and affiliated entities." Attachment A to PSNH's February 21, 2014, motion to compel TransCanada, at bates page 44. TransCanada responded to some requests and objected to others. PSNH's subsequent motion to compel resulted in *Public Service Co. of N.H.*, Order No. 25,646 (April 8, 2014) (the April 8 Order).

Given the volume of disputed requests between them, the April 8 Order directed PSNH and TransCanada “to make a good faith effort to resolve their outstanding discovery disputes using the discovery standards and rulings in this order as guidance.” April 8 Order at 35. We commend PSNH and TransCanada for resolving most of their discovery disputes. PSNH’s pending motion involves the following seven requests:

Request No. 23: Please provide copies of any and all documents relating to cost estimates for the installation and operation of scrubber technology for all coal-fired generating plants in which TransCanada has a direct or indirect interest.

Request No. 34: Page 13, Line 18 – You testify about assumptions regarding the forecast price of natural gas.

a. Please provide all fuel price forecasts relating to the price of coal, oil and natural gas produced by or available to TransCanada from 2005 through 2012.

Request No. 52: Please provide copies of any and all documentation in TransCanada’s possession regarding the forward market for natural gas delivered to New England in the 2008 through 2011 time frame.

Request No. 74: Page 21 - You provide a quote from a Wall Street Journal article from November 2009 stating that the potential of unconventional gas supply “became clear around 2007.”

b. Please provide any studies or statements made by TransCanada in the 2008/2009 timeframe on the effects of horizontal drilling and hydraulic fracturing on future gas supply and prices.

Request No. 75: Page 21, Line 20 – You testify that “the potential of the unconventional gas supply ‘became clear around 2007.’”

c. When did TransCanada first acknowledge the impact of Marcellus gas on gas prices? Please provide all documents evidencing that acknowledgment.

Request No. 159: Please provide copies of any and all documentation that TransCanada has regarding estimates of newly proposed coal and natural gas combined cycle generating stations in the 2008-2009 time frame.

Request No. 161: Please provide any and all documentation in TransCanada’s possession related to the bus bar costs of power for a new coal or

natural gas combined cycle plant in New England during the 2008 to 2012 time period.¹

Motion at 5-6 (emphasis added). TransCanada responded to these requests on behalf of the two TransCanada entities that are parties to this docket, but did not respond as to its affiliates.

Motion at 4; Objection at 1-2.

The April 8 Order provided PSNH with specific guidance for data requests directed at TransCanada's non-party affiliates:

We granted intervenor status to TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast, Inc. Only those TransCanada entities are parties to this case and we will not compel TransCanada to answer questions directed at other TransCanada affiliates. Nonetheless, if PSNH can make a particularized showing that it has a substantial need for specific information from a non-party TransCanada affiliate, which information is necessary to this docket and not otherwise available, we will consider such a request.

April 8 Order at 35-36 (citation omitted). Citing the last sentence above, PSNH filed a motion to compel supplemental answers to the seven requests from the appropriate TransCanada affiliates.

II. POSITIONS OF THE PARTIES

A. PSNH

PSNH argued, first, that TransCanada based its intervention request, in part, upon its affiliates. PSNH cited the following statements from TransCanada's December 7, 2011, *Petition to Intervene on Behalf of TransCanada* (Petition to Intervene) (Tab 7): "TransCanada and its affiliates are involved in the transportation of natural gas and the power generation business in North America," they "collectively own approximately 567 MW of hydroelectric generation capacity [mostly] in New Hampshire," and they have "gained knowledge of this [Scrubber]

¹ The "bus bar" cost of power is the cost to produce electricity up to the point where it enters the transmission system.

Project and PSNH that could be of value to the parties and to the Commission.” Petition to Intervene at 2-3. PSNH repeated TransCanada’s statement that it is an electricity supplier and competitor of PSNH, whose “rights, duties, privileges or substantial interests ... may be affected by [this] proceeding.” Petition to Intervene at 2. During the prehearing conference at which the Commission addressed interventions, counsel for TransCanada said,

So, I think TransCanada tries very hard to take a responsible position in any docket that it participates in. But I think it has knowledge and experience and expertise that contribute to the process. And, so, I think it’s in the interest of justice for the Commission to allow that intervention.

Transcript of 12/13/11 Prehearing Conference at 45.

Second, PSNH argued that its requests seek relevant information that is necessary to evaluate and possibly impeach the testimony of TransCanada’s witness, Michael Hachey. PSNH quoted excerpts from Mr. Hachey’s testimony that discussed issues related to the seven data requests. Motion at 2-3, 10-12; *see* 12/23/2013 Testimony of Michael E. Hachey (Hachey Testimony) (Tab 138).

Third, PSNH argued it made the required showing that it has ““a substantial need for specific information from a non-party TransCanada affiliate, which information is necessary to this docket and not otherwise available.”” Motion at 14 (*quoting* April 8 Order at 35-36). Finally, PSNH cited prior orders where we compelled responses from affiliated companies. *Electricity Utility Customers*, Order No. 25,439 at 3-5 (Dec. 7, 2012); *Verizon New England, Inc.*, Order No. 24,767 at 7 (June 22, 2007).

B. Trans Canada

TransCanada objected, claiming that the requested information is irrelevant. TransCanada argued that the point of Mr. Hachey’s testimony was to stand in PSNH’s shoes in the 2008-2009 timeframe and examine only the information then available to PSNH. *Objection*

to Public Service Company of New Hampshire's Motion to Compel TransCanada to Respond to Data Requests (Objection), at 4. TransCanada argued that Mr. Hachey purposely did not rely on information that was unavailable to PSNH and thus did not rely on information available only to TransCanada affiliates. Objection at 4-5. Based on his review of information available to PSNH, Mr. Hachey opined that PSNH acted imprudently in building the Scrubber. Hachey Testimony at 22, 27, and 29. Because Mr. Hachey did not rely on information unavailable to PSNH, regardless of whether that information would support or undermine his opinion, TransCanada argued such outside information is irrelevant. Objection at 4-5.

TransCanada also objected because some of the affiliate information is publicly available, contrary to the requirement that PSNH prove it is “not otherwise available.” April 8 Order at 36. TransCanada argued certain codes of conduct prohibited disclosure of some responsive information from its affiliates, although TransCanada did not develop this argument. Objection at 2, 4. Finally, TransCanada objected to each of the seven requests on grounds of being overbroad, irrelevant, or involving improper time periods. Objection at 7-9.

III. COMMISSION ANALYSIS

Standard 2 in the April 8 Order, titled “Standard for Requests of a Party Regarding its Witness’s Testimony,” provided as follows:

PSNH directed a number of its requests at parties rather than the witnesses sponsored by those parties. To the extent these requests are related to the witnesses’ testimony we do not find dispositive the distinction between a party and its sponsored witness for purposes of discovery. We will thus compel answers to data requests directed toward the party if the requests are related to the testimony of its sponsored witness.

April 8 Order at 5. Applied here, Standard 2 requires TransCanada to answer data requests “related to” Mr. Hachey’s testimony. We first examine whether the disputed requests sought such related information.

Request 23 asked for “cost estimates for ... scrubber technology for all coal-fired generating plants in which TransCanada has a[n] interest.” We find that Request 23 did not seek information related to Mr. Hachey’s testimony. Mr. Hachey did not discuss the cost of the Scrubber other than to criticize how PSNH disclosed the cost increases. *Id.* at 6-10. The costs for a scrubber that a TransCanada affiliate may have considered or installed is not related to Mr. Hachey’s testimony. Therefore, we DENY PSNH’s motion to compel a further response to Request 23.

Request 159 sought “estimates of newly proposed coal and natural gas combined cycle generating stations in the 2008-2009 timeframe.” Request 161 asked for “the bus bar costs of power for a new coal or natural gas combined cycle plant in New England during the 2008 to 2012 time period.” These questions similarly fail to seek information related to Mr. Hachey’s testimony. Mr. Hachey’s only statement on this topic follows: “The Merrimack scrubber involved a large capital investment decision - an expenditure of about \$1,000/kW - roughly the cost to build an entire new gas-fired combined cycle power plant.” *Id.* at 26. This single reference to the “rough” cost of building a gas-fired power plant does not make relevant TransCanada’s cost estimates for coal and gas-fired projects. We DENY the motion to compel further responses to Requests 159 and 161.

Mr. Hachey’s testimony discussed gas price forecasts at length. Hachey Testimony at 14-22. Requests involving the price of natural gas thus seek information that is generally relevant under Standard 2. The April 8 Order contained the added requirement that PSNH must satisfy before we will compel information from TransCanada affiliates, as quoted above. April 8 Order at 35. Therefore, the issue is whether PSNH made “a particularized showing” of a

“substantial need” for the information and whether that the information is “not otherwise available.” April 8 Order at 35-36.

Request 34a asked for “all fuel price forecasts relating to the price of coal, oil and natural gas produced by or available to TransCanada from 2005 through 2012.” Although a close call, we find PSNH made a sufficient showing as to some information within Request 34a. Natural gas price forecasts during critical times may be necessary to resolve issues in this docket, and such forecasts held by TransCanada affiliates are unavailable to PSNH. Therefore, we GRANT the motion to compel TransCanada to supplement its response to Request 34a on behalf of its affiliates, limited as follows: TransCanada must produce fuel price forecasts for natural gas and coal (not oil), that were produced by or were in the possession of TransCanada affiliates during the period January 1, 2005, through December 31, 2008, and that were long term forecasts that included prices for 2012 or beyond.

Request 52 asked for documents “regarding the forward market for natural gas delivered to New England in the 2008 through 2011 time frame.” This request is a subset of the information sought in Request 34a and will be produced in response to that request. We thus GRANT the motion to compel a supplemental response to Request 52. In its response to Request 34a, we direct TransCanada to identify those documents that are also responsive to Request 52.

Mr. Hachey quoted a 2009 article from the *Wall Street Journal* that said the potential of new gas supplies from hydraulic fracturing and horizontal drilling “became clear around 2007.” Hachey Testimony at 21. Mr. Hachey criticized PSNH for not appreciating the potential impact on prices from these new supplies. *Id.* at 21-22.

Request 74 asked TransCanada to produce “any studies or statements made by

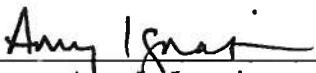
TransCanada in the 2008/2009 timeframe on the effects of horizontal drilling and hydraulic fracturing on future gas supply and prices.” Request 75c asked, “When did TransCanada first acknowledge the impact of Marcellus gas on gas prices?” The requested information is necessary because it may shed light on how industry thought the new drilling technologies would impact prices and on whether PSNH’s interpretation was reasonable. To the extent the information was held by TransCanada affiliates it is unavailable to PSNH. We thus GRANT the motion to compel supplemental answers to Requests 74b and 75c.

Based upon the foregoing, it is hereby

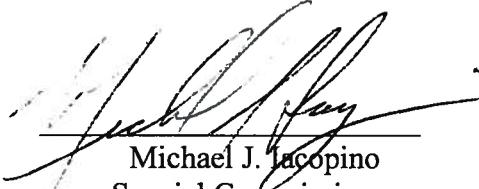
ORDERED, that based on the foregoing, it is hereby ordered PSNH’s motion to compel TransCanada to provide supplemental answers from TransCanada affiliates is GRANTED as to requests 34a, 52, 74b, and 75c, as limited above, and DENIED as to requests 23, 159, and 161; and it is

FURTHER ORDERED, that TransCanada shall provide the supplemental responses by May 19, 2014.

By order of the Public Utilities Commission of New Hampshire this eighth day of May, 2014.


 Amy L. Ignatius
 Chairman


 Martin P. Honigberg
 Commissioner


 Michael J. Jacopino
 Special Commissioner

Attested by:


 Debra A. Howland
 Executive Director