

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

DE 10-261

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
2010 Least Cost Integrated Resource Plan**

**Motion to Compel Public Service Company of New Hampshire
to Respond to Data Request TC 4-17**

NOW COMES TransCanada Power Marketing Ltd. and TransCanada Hydro Northeast Inc. (“TransCanada”), an intervenor in this docket, and moves this Honorable Commission, pursuant to Admin. Rule Puc 203.09 (i), to compel Public Service Company of New Hampshire (“PSNH”) to respond to data request TC 4-17, which TransCanada submitted to PSNH on December 16, 2011, described in more detail below. In support of this Motion TransCanada states as follows:

1. As the Commission noted in the Order of Notice in this docket, PSNH’s initial filing included a “continuing unit operation study” for Newington Station as had been directed by the Commission in the last least-cost integrated resource plan (“LCIRP”) proceeding. See *Re Public Service Company of New Hampshire*, Order No. 24,945, 94 NH PUC 103, 111 (2009). In the Order of Notice the Commission also noted that the filing raises “issues related to whether PSNH’s planning process is adequate as defined by the requirements set forth in RSA 378:38 and 39 and Order No. 24,945 and whether it is consistent with RSA Chap. 374-F and RSA 369-B:3a.” Order No. 24,945, the order cited above that the Commission issued in PSNH’s 2007 LCIRP, required that PSNH “include in future LCIRPs an economic analysis of retirement for any unit in

which the alternative is the investment of significant sums to meet new emissions standards and/or enhance or maintain plant performance.” 94 NH PUC at 111.

2. Earlier in this docket TransCanada filed a motion to compel PSNH to provide information from the GE-MAPS model runs prepared for Northeast Utilities by Charles River Associates (“CRA”) as part of CRA’s study entitled “LMP and Congestion Impacts of Northern Pass Transmission Project”, dated December 7, 2010. The data requested provided for scenarios both with and without the Northern Pass Transmission line. In Order No. 25,263 dated August 30, 2011 the Commission granted the motion to compel saying that it agreed with TransCanada’s position that the information being sought would be relevant or likely to lead to evidence that is relevant to the proceeding: “Independent verification of the data and methodology used in the Newington CUO Study by the parties to this proceeding, through discovery, assists us in this goal [assessing PSNH’s planning processes and the Newington CUO study to provide insight into the economic aspects of the plant’s operation].” Order No. 25,263, page 6.

3. On October 7, 2011 Michael Hachey submitted supplemental testimony in which he reviewed the information provided by PSNH regarding the model runs in the CRA Study and compared those results with the results from the Levitan analysis of Newington Station.

4. On October 26, 2011 PSNH submitted the Joint Rebuttal Testimony of Richard Levitan and Dr. Richard Carlson of Levitan & Associates, Inc. (“Levitan Rebuttal Testimony”). Pages 28 and 29 of that testimony address the Newington Station Results in the CRA Study of Northern Pass and rebut Mr. Hachey’s supplemental

testimony. A copy of this portion of the Levitan testimony is attached as Exhibit 1 to this Motion.

5. In accordance with the procedural schedule in this docket on December 16, 2011 TransCanada submitted data request TC-4-17, a copy of which is attached as Exhibit 2. This data request set forth a series of questions specifically related to the portion of the Levitan Rebuttal Testimony concerning the CRA study.

6. On December 27, 2011 PSNH objected to this data request on the grounds that the request seeks information that is not reasonably calculated to lead to the discovery of information that would be admissible in this proceeding for the reasons stated in the Levitan Rebuttal Testimony. See Exhibit 2.

7. The data request to which PSNH has objected relates specifically to the portion of the Levitan Rebuttal Testimony concerning the CRA study and goes to the very heart of one of the issues that the Commission has indicated is a critical part of this docket, i.e. evaluating the continued operation of Newington Station. Requiring the consultant PSNH has hired to study Newington Station and to testify before the Commission to respond to the CRA-related questions and to make this information available for review by Staff, the OCA and intervenors like TransCanada who have the expertise and experience to assist the Commission in evaluating these issues, is of prime importance to this docket. Denying the parties to this docket and ultimately the Commission the response to these questions is likely to limit the Commission's ability to evaluate whether the continued operation of Newington makes economic sense and would limit the Commission's ability to carry out its responsibility of evaluating the adequacy of the utility's planning process and evaluating the Company's primary

objective of developing and implementing “an integrated resource plan that satisfies customer energy service needs at the lowest overall cost consistent with maintaining supply reliability.” 94 NH PUC at 109. Sustaining PSNH’s objection to this data request will also restrict TransCanada and other intervenors’ ability to protect their “rights, duties, privileges, immunities or other substantial interests” that may be affected by this proceeding. See RSA 541-A:32; Admin. Rule Puc 203.17.

8. The long-standing standard that the Commission has used to evaluate discovery requests is whether the information being requested is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence. *Re Verizon New England, Inc., et al*, 92 NH PUC 234, 236 (2007). The request at issue here clearly passes the first part of this test; it asks follow-up questions to the Levitan Rebuttal Testimony that is now on file with the Commission and will be offered during the hearings and that pertains to a study that the Commission has already determined is relevant to the proceeding. As the Commission made clear in the Order of Notice in this docket, and as Staff has made clear throughout this proceeding, the evaluation of the continued operation of Newington Station is a critical part of this docket. Responses to questions that relate to the operation of Newington Station that might shed light on this important issue in this docket should be provided and available for review by the parties and the Commission. Moreover, the response to the data request being asked here clearly could lead to the discovery of evidence that would be admissible in this docket (the second part of the Commission’s test referenced above) as it relates directly to Newington Station and rebuttal testimony that has been submitted and thus to the continuing unit operation study that is an important part of this proceeding.

9. Commission and the parties should have the responses to these questions because they are likely to provide current and timely information and data that is relevant to the analysis being done at this point in time in this docket. PSNH asserts in every forum the value of its generating assets to its customers and their continuing usefulness with respect to energy security and other claimed attributes. These assertions need to be examined and tested. PSNH prefers that its generation remain regulated, thus transferring all of the risk of its decisions to the remaining customers rather than to investors. Taking an unnecessarily restrictive or limited view of discovery on this particular request in this particular docket will serve no purpose other than to protect PSNH from the level of scrutiny that it must accept in return for the benefits and protections it receives from rate of return regulation. PSNH cannot continue to have it both ways: risk free decisions and frequent withholding of information that can help to evaluate the merit of those decisions.

10. For the reasons cited above, the Commission should compel PSNH to respond to this data request so that this information can be made available to the TransCanada, Staff, the OCA and all of the parties to this docket. The hearing date for this proceeding has now been put off for a couple of months so there is plenty of time in the procedural schedule for this data request to be answered and provided to the parties.

11. Counsel to TransCanada has participated in a conference call with Staff, PSNH and the other parties to this docket in an attempt to resolve this and other discovery issues in good faith, as required by Puc 203.07(i)(4), and has contacted counsel to PSNH, to no avail.

WHEREFORE, TransCanada respectfully requests that this honorable

Commission:

- A. Compel PSNH to respond to TC 4-17; and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,

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Douglas L. Patch

January 19, 2012

Certificate of Service

I hereby certify that on this 19th day of January, 2012 a copy of the foregoing motion was sent by electronic mail to the Service List.



Douglas L. Patch

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