

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 11-250**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

**Investigation of Merrimack Station Scrubber  
Project and Cost Recovery**

**Order Denying Motion for Rehearing and/or Reconsideration of Order 25,334**

**ORDER NO. 25,361**

**May 11, 2012**

**I. PROCEDURAL BACKGROUND**

On March 12, 2012, the Commission issued Order No. 25,334 in this docket in response to a motion by Conservation Law Foundation (CLF) to compel a response to a specific data request issued to Public Service Company of New Hampshire (PSNH or Company). The data request asked PSNH to produce permits and approvals issued or sought in connection with the disposal of wastewater from the wet flue gas desulphurization system, commonly known as the “Scrubber,” at Merrimack Station. In response to the data request, PSNH provided representative information about its discharge permits and its agreements with local municipal publicly owned treatment works to dispose of Scrubber wastewater.

In its motion to compel, CLF stated that PSNH’s response to the request was incomplete and insufficiently responsive. As stated in Order No. 25,334, CLF contended that the discovery request asked the Company to produce:

all permits, approvals, agreements, transit arrangements, bills of lading, manifests, invoices, and receipts with respect to all publicly or privately owned wastewater treatment/disposal facilities and/or shippers with whom PSNH has arranged to dispose of scrubber wastewater including records of disposal to date. Without

limitation, a [sic] the response must be sufficiently detailed for the parties to ascertain from the foregoing information: 1) the total amount of wastewater PSNH has disposed of; 2) the amounts sent to each disposal facility; 3) the costs incurred for each such shipment; and 4) when each such wastewater transfer/disposal occurred. Order No. 25,334 at 6.

PSNH countered that CLF was attempting to convert the request into something it was not, and that the information sought by CLF was either irrelevant to establishing temporary rates or irrelevant to the matters before the Commission in this docket.

In Order No. 25,334, the Commission determined that it did not find “the additional detail regarding the costs and circumstances of the disposal of wastewater from the Scrubber facility information requested in the Motion to Compel is likely to produce admissible evidence in the temporary rate portion of the docket.” *Id.* at 9. The Commission further concluded, however:

[T]hat information about the manner and cost of wastewater disposal is reasonably calculated to lead to the production of admissible evidence in the permanent rate phase of this proceeding. Accordingly, we grant CLF’s motion to compel in part, with the condition that PSNH need not produce the requested information in the context of the temporary rate phase of the proceeding. *Id.* at 10.

On April 11, 2012, PSNH filed a motion for rehearing and/or reconsideration of Order No. 25,334 and on April 16, 2012, CLF filed an objection to PSNH’s motion.

## **II. POSITIONS OF THE PARTIES**

### **A. Public Service Company of New Hampshire**

PSNH filed its motion for rehearing pursuant to RSA 541:3. PSNH stated that its motion seeks to clarify the scope of materials to be produced in response to Order No. 25,334.

Specifically, PSNH requested that the Commission clarify that production of information concerning the manner and cost of Scrubber wastewater disposal requires production of the

following: (1) the date of each shipment; (2) the volume of wastewater shipped; (3) the location of the shipment, and (4) the cost associated with the shipment. According to PSNH, the date, volume, location, and cost information is sufficient to evaluate the costs of the operation of the Scrubber. PSNH Motion at 1-2.

In its motion, PSNH also requested that the Commission order that bills of lading, truck manifests, invoices, transit arrangements, and receipts associated with disposal of Scrubber wastewater are beyond the scope of the Order No. 25,334. *Id.* at 2. PSNH said it could not conceive how bills of lading and truck manifests associated with disposal of Scrubber wastewater would provide insight into the prudence of the costs of the Scrubber. PSNH further claimed that requiring the level of detail sought by CLF would create diversions from the purpose of this docket. Accordingly, PSNH requested that the Commission limit the scope of the production of information in the manner it described. *Id.* at 3.

### **B. Conservation Law Foundation**

In its objection to PSNH's motion for rehearing, CLF noted that the Commission determined that the prudence of the costs incurred for disposing of Scrubber wastewater is an element of the permanent rate phase of this proceeding.<sup>1</sup> CLF Objection at 1. CLF argued that PSNH's motion did not demonstrate that the documents which the Commission ordered PSNH to produce in Order No. 25,334 are outside the legally permitted scope of discovery in this proceeding, and, therefore, PSNH's motion for rehearing did not comply with the requirement of RSA 541:4. According to CLF, RSA 541:4 requires that a motion for rehearing set forth "every

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<sup>1</sup> See Order No. 25,346 (April 10, 2012), the order on temporary rates in the instant proceeding, at 22.

ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.” *Id.* at 3.

CLF further claimed that PSNH’s inability to appreciate the relevance of truck manifests and bills of lading to the prudence review of the Scrubber installation and operation is less than an adequate legal basis for a finding that the Order No. 25,334 is unlawful and unreasonable. CLF insisted that the requested information is highly relevant and is calculated to lead to the discovery of admissible evidence. *Id.* at 4.

CLF contended that if PSNH is permitted to disclose information in the manner it requests, PSNH will be able to hide information about the treatment and disposal of Scrubber wastewater and thereby prevent disclosure of information that would allow the parties to better understand the disposal of the wastewater, the prudence of the disposal decisions, and the cost to ratepayers. *Id.* at 4-5. According to CLF, the failure to allow the parties to inquire and review documents regarding costs for which PSNH seeks to recover from ratepayers would be contrary to Commission rules and precedent. In summary, CLF stated that there is no legal basis for the Commission to revise its legal conclusion in ordering PSNH to produce the requested information and that the Commission should deny PSNH’s motion. *Id.* at 5.

### **III. COMMISSION ANALYSIS**

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding, *see O’Loughlin v. N.H. Personnel Comm’n* 117 N.H. 999, 1004 (1977), or by identifying specific matters that were “overlooked or mistakenly conceived” by the deciding tribunal. *Dumais v. State*, 118 N.H. 309,

311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Public Service Company of New Hampshire*, Order No. 25,239 (Jun. 23, 2011) at 8.

We find that PSNH's motion for rehearing does not meet the requisite standard. PSNH does not identify any new evidence or allege any matter that it believes we overlooked or mistakenly conceived, nor does PSNH claim that the Commission made an error of law. Instead, PSNH seeks to limit the scope of its response by asking the Commission to narrow the category of information to be provided by the Company. In granting CLF's motion to compel, we determined that the information CLF requested—including the bills of lading and truck manifests—are relevant to the permanent phase of this proceeding and we, therefore, deny PSNH's motion for rehearing or reconsideration.

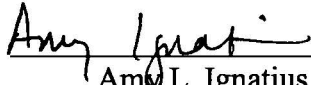
Having so decided, we impress upon the parties that the purpose of this proceeding is to investigate the costs, and PSNH's prudence in incurring the costs, in connection with the construction and operation of the Scrubber. We will defer to the New Hampshire Department of Environmental Services for its regulatory expertise regarding issues related to PSNH's compliance with the wastewater disposal permits and questions regarding whether PSNH's Scrubber wastewater disposal otherwise comports with applicable environmental regulations.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the motion for rehearing and/or reconsideration by Public Service Company of New Hampshire is hereby DENIED.


By order of the Public Utilities Commission of New Hampshire this eleventh day of May,

2012.

  
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Amy L. Ignatius  
Chairman

  
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Michael D. Harrington  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director

**SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED**

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