

THE STATE OF NEW HAMPSHIRE  
before the  
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire  
Least Cost Integrated Resource Plan  
Docket No. DE 10-261

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S OBJECTION TO  
NEW HAMPSHIRE SIERRA CLUB'S MOTION TO COMPEL

Pursuant to N. H. Code Admin. Rule Puc §203.07 (e), Public Service Company of New Hampshire ("PSNH" or "the Company") hereby objects to a Motion to Compel filed by New Hampshire Sierra Club ("NHSC") on March 7, 2011. In support of its Objection, PSNH says the following:

1. In its Motion to Compel, NHSC admits the standard for which PSNH ought to be planning was filed three and one half months after PSNH filed its least cost integrated resource plan.<sup>1</sup> The rule is not yet final. PSNH cannot be required to plan for compliance with a standard that has yet to be promulgated in final form. PSNH cannot be asked to address a moving target with standards that were not in existence when it prepared its least cost plan.

2. As PSNH stated in its objections to the NHSC data requests, the filings described in Data Request Q-NHSC-002 were responses to specific requests from Air Resources Division of the Department of Environmental Services ("NH DES ARD"), the assumptions under which were different in each request. With each assumption changed the possible compliance costs changed. NH DES-ARD asked these questions/requested these studies of PSNH in preparation of the Regional Haze BART plan that it was preparing to file with the EPA. The accuracy of these three filings made with the NH DES ARD is the business of that Division and not this Commission.

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<sup>1</sup> "NHDES-ARD forwarded its final version of the Regional Haze SIP [State Implementation Plan] to Region 1, United States Environmental Protection Agency on January 14, 2011." NHSC Motion at 2.

3. “In deciding whether or not the utility's planning process is adequate the commission shall consider potential environmental, economic and health-related impacts *of each proposed option.*” RSA 378:39 (emphasis added). PSNH did not propose retirement of Merrimack as an option and is not required to do so. PSNH is not required to justify retention of its generating assets when filing a least cost plan. Docket No. DR 04-072, *PSNH Least Cost Plan*, Order No. 24,695, 91 NH PUC 527, 540 (2006); Docket No. DE 07-108, *2007 Least Cost Integrated Resource Plan*, Order No. 24,945, slip op. at 16 (2009). Proposed options contained in the least cost plan for example would be the addition of a supply side or demand side resources, not compliance with a rule which may become final one year after the plan is filed. The Regional Haze BART eventually approved by the EPA may have no recommendations for compliance actions at Merrimack Station due to the reductions in pollutants that will be achieved by the wet flue gas scrubber.

4. The vast majority of the objectionable material NHSC seeks here relates to a draft rule designed to deal with regional haze, know as the “BART” rule. The draft BART rule is currently being finalized by the New Hampshire Department of Environmental Resources Air Resources Division (“DES”) and the US Environmental Protection Agency (“EPA”), the agencies with expertise in air emissions. It is the job of the agencies with the appropriate expertise--DES and EPA--to review relevant information and to test the accuracy of projected scenarios. It is to those agencies that NHSC should submit any comments or concerns. This docket is not the appropriate forum. The draft BART rule has no relevancy to these proceedings. Moreover, NHSC has raised this same issue and sought this same material elsewhere on multiple other occasions and each time, its efforts failed.

5. Most recently, NHSC filed an appeal before the New Hampshire Air Resources Council challenging the issuance of a Title V Operating permit to Merrimack Station. See Docket No. 10-06 ARC. One claim in that NHSC appeal

related to the same BART issues NHSC raises here. PSNH moved to dismiss various portions of NHSC Appeal, including the BART claim. The ARC granted PSNH's Motion, ruling that because the BART requirements were still in draft form, they were not properly part of the proceeding. *See* February 28, 2011 ARC Order at 3 (Attached as Exhibit A). If the agency with jurisdiction over such issues has refused to hear them because they are premature, certainly such issues have no place in this proceeding.

6. Regarding NHSC's third data request (Q-NHSC-003) seeking a vast amount of plant operational data, none of which is within the scope of the Least Cost Integrated Resource Plan, PSNH objected because the information is irrelevant to this docket, it is not reasonably limited in scope, it would be excessively burdensome to provide this information, and much of the operating data is confidential business information.<sup>2</sup> In addition, NHSC is attempting to use this forum to circumvent the rulings made by other governmental agencies or councils in which its attempts to gather confidential information were repeatedly denied. For example, NHSC separately appealed the issuance of the air permit for the Scrubber. During that appeal, NHSC filed multiple discovery requests to which PSNH objected. Some of those requests sought the same type of detailed operational information NHSC seeks here. *See e.g.* NHSC Second Request for Information (Attached as Exhibit B). PSNH objected to this Second Request, and NHSC moved to compel. The ARC denied NHSC's motion in full, finding that the requests were not related to the matter at hand, were overly broad, not reasonably limited in scope, sought confidential information and were excessively burdensome. *See* September 11, 2009 ARC Order at 1 (Attached as Exhibit C). The circumstances there are the same as those here, and this motion should be denied for the same reasons.

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<sup>2</sup> As a point of clarification, PSNH did not claim in its objection that the BART information filed with DES was confidential since PSNH is fully aware that that information was released by the State and PSNH chose not to object to such release.

7. NHSC has also sought this same type of information from the EPA. Over the course of the last two years, in response to EPA requests, PSNH provided EPA with substantial amounts of information related to operations at its various plants. PSNH claimed that much of that information was confidential. NHSC sought disclosure of that information. EPA upheld the vast majority of PSNH's claims of confidentiality and declined to provide the information.

8. NHSC has tried multiple times, in multiple forums, to get the same type of information it now seeks here. It has been rebuffed each time. Not only are such efforts irrelevant and inappropriate here, but there certainly must come a point when such efforts should be barred by collateral estoppel and/or res judicata. *See, discussion, Re: Connecticut Valley Electric Co.*, Docket No. DE 00-110, Order No. 23,939, 87 NH PUC 150, 169 (2002), *citing Canty v. Hopkins*, 146 NH 151, 155 (2001), and *Warren v. Town of East Kingston*, 145 N.H. 249, 252, (2000). Deference should be given to the agency charged with the administration of the statute and its decisions regarding the production of confidential business information. *New Hampshire Retirement System v. Sununu*, 126 NH 104, 108 (1985).

9. Moreover, in a letter to PSNH dated April 8, 2009 (Attached as Exhibit D), NHSC explicitly threatened to sue PSNH over alleged federal Clean Air Act violations. Given this threat, NHSC's repeated efforts to obtain information about operations at PSNH that seem to relate to the threatened litigation should be viewed cautiously by the Commission. PSNH views these information gathering efforts as poorly disguised attempts to come up with a case. To the extent such efforts are really intended to gather such information for other purposes, like the threatened litigation, those requests are not proper in this proceeding and constitute an abuse of the process and a misuse of valuable limited resources.

10. NHSC's Motion to Compel must fail because NHSC did not certify that it has made a good-faith effort to resolve the dispute informally as required by Puc § 203.09 (i)(4). NHSC made no such effort.

WHEREFORE PSNH respectfully requests this Commission to deny NHSC's Motion to Compel and order such further relief as may be just and equitable.

Respectfully submitted,  
Public Service Company of New Hampshire

March 21 2011  
Date

By: Gerald M. Eaton  
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(603) 634-2961

#### CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached Objection to New Hampshire Sierra Club's Motion to Compel to be served pursuant to N.H. Code Admin. Rule Puc §203.11.

March 21 2011  
Date

Gerald M. Eaton  
Gerald M. Eaton



**Public Service  
of New Hampshire**

PSNH Energy Park  
780 North Commercial Street, Manchester, NH 03101

Public Service Company of New Hampshire  
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(603) 669-4000  
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The Northeast Utilities System

March 4, 2011

Arthur B. Cunningham, Esq.  
Law Offices of Arthur B. Cunningham  
P.O. Box 511  
Hopkinton, New Hampshire 03229

Catherine Corkery  
N. H. Sierra Club  
40 North Main St 2nd Floor  
Concord, New Hampshire 03301

Re: PSNH 2010 Least Cost Integrated Resource Plan  
NH PUC Docket No. DE 10-261

Dear Attorney Cunningham and Ms. Corkery:

Enclosed please find Public Service Company of New Hampshire's  
Objections to three of the data requests you served on February 23, 2011.

Copies of the Objection were sent to the parties by electronic mail on  
March 4, 2011.

Very truly yours,

Gerald M. Eaton  
Senior Counsel

cc: Service List  
Enclosures

THE STATE OF NEW HAMPSHIRE  
before the  
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire  
Least Cost Integrated Resource Plan  
Docket No. DE 10-261

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S  
OBJECTIONS TO SIERRA CLUB'S DATA REQUESTS

Pursuant to N. H. Code Admin. Rule Puc §203.09 (g), Public Service Company of New Hampshire ("PSNH") hereby objects to Requests 1, 2 and 3 of the data requests propounded by the New Hampshire Sierra Club on February 23, 2011. In support of its Objection, PSNH says the following:

1. The text of the data requests to which PSNH objects are as follows:

**Q- NHSC-001**

**Question:**

Please fully explain the assumptions used to establish the \$30/mmwh difference between the cost of Merrimack Station and the costs of replacement power on the market used throughout the Regional Haze BART emission limit calculations;

**Q-NHSC-002**

**Question:**

Please reconcile the inconsistent cost per ton compliance calculations in the July 9, 2010, August 16, 2010, and December 15, 2010, submissions to NHDES-ARD;

**Q-NHSC-003**

**Question:**

In order for the public to ensure the factual integrity of the PSNH Regional Haze MK2 BART cost calculations by independent analysis, please provide the following information [in electronic format, native language, to the extent feasible] MK2 is a BART eligible generating unit.:

- a. Coal specifications for last 5 years and coal expected to be burned in the future;
- b. NERC GADS data (design, event, performance) for the last 5 years;
- c. Design information on current low NOx burners, over-fire air, and combustion controls;
- d. Copies of all performance test reports involving low-NOx burners, over-fire air, combustion controls for the last 5 years;

- e. Design information on current SCR catalysts, including catalyst degradation information;
- f. Name and address of SCR catalyst supplier;
- g. Copy of SCR catalyst management plan;
- h. Dates when SCR catalysts were changed in each of the layers in the last 5 years;
- i. Status of catalyst by-pass dampers and current manner in which they are operated and copies of work orders or projects undertaken to fix any damper bypass problems in the last 5 years;
- j. Details of SCR temperature permissive and logic when catalyst bypass is used;
- k. Details of all air pre-heater cleaning events in last 5 years together with details of logic used to trigger the cleaning;
- l. Copies of all stack tests in the last 5 years in which the NO<sub>x</sub> at boiler outlet (i.e., SCR inlet) was measured;
- m. Copies of plant process data showing SCR inlet NO<sub>x</sub> data, ammonia feed data, and ammonia slip data;
- n. Soot-blowing details – figure showing locations and names of all soot-blowers in boiler and for each SCR catalyst later, and elsewhere; logic that is used to trigger soot-blowing events in boiler and for SCR catalysts; and, compilation of soot-blowing events (start, duration) for last 5 years;
- o. Copies of all CEMS RATA tests for NO<sub>x</sub>, SO<sub>2</sub>, CO, O<sub>2</sub>, etc. for last 5 years;
- p. Copies of any ASTM boiler efficiency tests conducted in last 5 years; and
- q. Copies of boiler operating manual and SCR operating manual.

2. PSNH is required to file a least cost integrated resource plan ("LCIRP") pursuant to RSA 378:38. The Commission reviews those plans "in order to evaluate the adequacy of each utility's planning process." RSA 378:39. The most recent plan was filed by PSNH on September 30, 2010. PSNH's filing was based upon data available as well as laws and regulations in effect in the summer of 2010. Any regulations, laws or orders promulgated any time subsequent to that filing date are irrelevant to the determination of the adequacy of PSNH's planning process as of the date of the preparation of its LCIRP. PSNH therefore, respectfully objects to these requests and declines to respond.

3. The data requests to which PSNH objects seek "to ensure the factual integrity of the PSNH Regional Haze MK2 BART cost calculations by independent analysis" Request NHSC-003. The investigation of the Regional Haze BART should take place before the agency that has jurisdiction the promulgation of the Regional Haze BART. Those regulations have not yet been



approved. The Commission is not in a position nor is it qualified to decide whether PSNH's filing of environmental data for Merrimack Unit 2 complies with any statutes, laws or regulations which the Commission does not oversee. The Commission need not listen to a battle of the environmental experts over issues which are not relevant to the adequacy of PSNH's planning as of mid year 2010. PSNH's planning for environmental changes can only be evaluated based upon regulations in effect when the least plan was compiled. There is no likelihood that the requested information would lead to the discovery of admissible evidence.

4. The filings described in Data Request Q-NHSC-002 were responses to specific requests from Air Resources Division of the Department of Environmental Services ("NHDES ARD"), the assumptions under which were different in each request. The accuracy of these three filings made with the NH DES ARD before the regulation has been issued is the business of that agency not this Commission.

5. Data Request Q-NHSC-003 is overly burdensome, contains confidential business information and is merely a fishing expedition for data to be used in some other proceeding in another forum.

Respectfully submitted,  
Public Service Company of New Hampshire

March 4 2011  
Date

By: Gerald M. Eaton  
Gerald M. Eaton  
Senior Counsel  
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Post Office Box 330  
Manchester, New Hampshire 03105-0330  
(603) 634-2961

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached Objections to Sierra Club's Data Requests to be served pursuant to N.H. Code Admin. Rule Puc §203.09 (d) and Puc §203.11.

March 4 2011

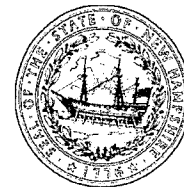
Date

Gerald M. Eaton

Gerald M. Eaton



The State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES  
*Air Resources Council*



PO Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095  
Appeals Clerk Telephone (603) 271-6072 - TDD Access: Relay NH 1-800-735-2964  
DES Website: [www.des.nh.gov](http://www.des.nh.gov) - Council Website: <http://www.des.nh.gov/councils/>

February 28, 2011

**Via E-mail and Regular Mail**

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Concord, NH 03301

Re: Docket No. 10-06 ARC – New Hampshire Sierra Club, et al.

Dear Attorneys Cunningham, Mulholland, Needleman and Duncan:

Enclosed you will find the NH Air Resources Council's Decision and Orders relative to the above-captioned appeal.

If you have any questions, please contact me at (603) 271-6072 or by e-mail at [amy.samson@des.nh.gov](mailto:amy.samson@des.nh.gov).

Sincerely,

**COPY**  
*Amy Samson*

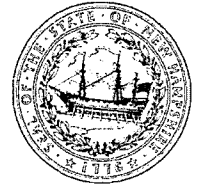
Amy Samson, Appeals Clerk  
NH Air Resources Council

cc: Steven Walker, Presiding Officer  
K. Allen Brooks, Office of Attorney General  
Robert Scott, Director, DES Air Resources Division  
Craig Wright, Assistant Director, DES Air Resources Division  
Liz Nixon, Gary Milbury, and Michelle Roberge, DES Air Resources Division  
Linda T. Landis, Senior Counsel, Legal Department, PSNH



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**  
***Air Resources Council***

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**STATE OF NEW HAMPSHIRE**

**AIR RESOURCES COUNCIL**

**Decision & Order**

**On Pending Motions**

**Docket No. 10-06 ARC**

Appeal of NH Sierra Club et al

In Re: Title V Permit

**Background:**

This appeal is currently pending before the Air Resources Council. The following motions are pending before the Council: 1) Motion to Dismiss; 2) Motion to Appoint Hearing Officer Pursuant to RSA 21-M:3; and 3) Motion for Subpoenas.

**Findings and Conclusions:**

**1. PSNH Motion to Dismiss (10/20/10). NHSC Objection (10/22/10). PSNH Reply (10/28/10).**

PSNH has filed a motion to dismiss arguing that all five issues (issues b-f) in NHSC's notice of appeal be dismissed. NHSC objects. The motion to dismiss presents legal issues requiring a determination by the Hearings Officer.

PSNH argues that issues b-d all relate to the 2008 MK2 turbine replacement project for which this Council has already ruled a permit is not yet, and may never be, required. Therefore, PSNH argues it could not be included in the Title V permit at issue, and is not an appropriate issue on appeal.

The NHSC makes various arguments in its objection to the dismissal of issues b-d. Regarding issue b, it contends that "Item No. 56, at Table 7 – Monitoring/Testing Requirements, at page 58 of the Proposed Title V Permit" raises issues concerning the

integrity of the Title V Permit because the requirements of Item No. 56 of the Permit are ambiguous. Regarding issue c, it contends that the administrative record is devoid of facts to support the Director's decision that the turbine project and related plant projects comply with the referenced statutes. Specifically, it contends that the Director's decision is in direct contradiction to Item No. 56, referenced above and the administrative record will establish this point. Regarding issue d, it contends that the determination that PSNH is entitled to a permit shield violates the Clean Air Act because the Proposed Title V Permit does not include all applicable provisions required by law, nor does it include an express determination that other programs are not applicable.

Regarding issues b-d, this Council has previously ruled in appeal docket numbers 09-10 and 09-11 that:

DES has not made a final decision on whether the MK2 turbine replacement should undergo new source review. Specifically, the applicable rules provide DES with a window of time to make such a determination, based on a receipt and review of emissions data. Until such time has passed, such review has been completed, and a decision on whether new source review is necessary is made, DES's action is not final. As such, the decision(s) of DES regarding this specific issue does not constitute a final action.

This decision was a final order of the Council and not appealed by the parties to that proceeding. As such, the MK2 turbine replacement does not have a permit which could currently be included in the Title V Permit at issue on appeal. Therefore, allegations that the Title V permit is deficient for not including within it a permit for the MK2 turbine replacement shall not be considered.

That being said, the NHSC has argued in its objection that there are certain other specified deficiencies in the Title V Permit that is the subject of this appeal. Specifically, NHSC claims that the requirements of Item No. 56 in the permit are ambiguous (see para. 1, NHSC objection), that the Director's decision that PSNH Merrimack meets all state and federal air regulations is in contradiction to Item No. 56 in the permit (see para. 2, NHSC objection), and that the permit does not include all applicable provisions required by law, nor does it include an express determination that other programs are not

applicable (see para. 5, NHSC objection). A hearing shall be held on these specified claims regarding the permit's alleged deficiencies.

Regarding issue e, PSNH contends that there are no current mercury requirements/standards which could be made part of the Title V permit and that claims that applicable state law is in violation of federal law is not properly before this Council. NHSC does not dispute that there is not a current mercury standard/requirement. However, NHSC counters that federal law required DES to establish emission standards for mercury but it has failed to do so, that the permit standards for mercury monitoring and testing is too vague, and that the permit did not provide a precise coal specification.

Claims that state statutes violate federal law are not within the jurisdiction of this Council and, therefore, not properly before this Council. The Council shall not consider such arguments in this appeal. Further, as neither party disputes that there are no currently enacted mercury requirements/permits which could have been included in this Title V permit, claims that the Title V Permit should have included a mercury requirement shall not be heard in this appeal.<sup>1</sup> However, NHSC also argues that the Title V Permit's requirements for mercury monitoring and testing are too vague, and that the permit did not provide a precise coal specification (see para. 3, NHSC objection). As the Title V permit includes requirements for mercury monitoring and testing and a coal specification, NHSC is entitled to a hearing on these specified claims concerning the vagueness and/or precision of the included requirements.

Regarding issue f, PSNH argues that the regional haze requirements are not final, and, therefore, not appropriately within the Proposed Title V permit. NHSC does not dispute this, but contends that the record will show that DES is delinquent in its responsibility to develop an enforceable regional haze rule<sup>2</sup>, that such delinquency does not excuse its failure to include regional haze requirements in the Title V Permit, and that the permit should not have been issued without developing such a standard (see para. 4, NHSC objection). As neither party disputes that the regional haze requirements are not final, they could not have been included in this proposed Title V Permit. As such, claims that the Title V Permit should have included such a standard shall not be heard in this appeal. See fn 1 & 2.

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<sup>1</sup> Claims that DES is somehow negligent in adopting a required standard or rule, or that state law violates federal law, may be properly brought in another venue.

<sup>2</sup> DES is subject to Federal oversight and sanctions.

In conclusion, in the instant appeal the Council shall not consider the issue of whether the MK2 turbine modifications from 2008 required a permit, or arguments that the DES should have required the MK2 turbine modifications to have a permit at the time the modifications were performed. The Council shall not consider claims that state statutes are in conflict with or violation of federal law. Further, the Council shall not consider claims that the permit should have included a mercury standard or regional haze standard as there is no dispute that such standards have not been enacted. To that extent the Motion to Dismiss is granted.

However, the Council shall hold a hearing on the remaining issues as set forth in the Notice of Appeal, clarified and specified within NHSC's objection, and discussed and ruled upon herein. To that extent the Motion to Dismiss is denied. Evidence at the hearing shall be limited to these specified issues and shall be presented in a clear, concise, and orderly manner. If, following a hearing, the permit is deemed unlawful, or arbitrary and capricious, it shall be remanded to the DES for further action.

For the foregoing reasons the Motion is **GRANTED IN-PART** and **DENIED IN PART**.

**2. NHSC Motion to Appoint Hearing Officer (11/22/10).**

NHSC has filed a motion requesting the New Hampshire Attorney General to appoint a hearing officer pursuant to RSA 21-M:3, and further claiming that the Attorney General's appointment of Steven Walker as the Hearing Officer in this matter is in violation of said statute.

The Attorney General appointed Steven Walker as the Hearings Officer in this matter pursuant to his authority under RSA 21-M:3 (SB 480). Arguments that the Attorney General did not have the authority under the referenced statute to appoint Steven Walker as the Hearings Officer are not persuasive. Further, this Hearings Officer has no authority or jurisdiction to order the Attorney General to take the action requested by the NHSC.

For the foregoing reasons the Motion is **DENIED**.

**3. NHSC Motion for Subpoenas (1/22/11). DES Objection to Motion for Subpoenas (2/3/11).**

The NHSC has requested the Hearings Officer to issue subpoenas regarding witnesses and documents. DES has objected, arguing, in part, that the Hearings Officer

does not have such authority in this appeal due to explicit statutory language in RSA 21-M:3, X. The arguments of DES on this issue are persuasive - the Hearings Officer does not have authority to grant the requested relief.

For the foregoing reasons the Motion is **DENIED**

**So Ordered by the Hearings Officer.**

February 28, 2011

by:  **COPY**  
Almorinda Samson, Appeals Clerk



## AIR RESOURCES COUNCIL

Exhibit B

Docket No. 09-10-ARC, # 09-11 ARC and #09-12-ARC

In the Matter of Temporary Permit TP – 0008, PSNH Merrimack Station 97  
River Road, Bow, NH; Facility Identification # 330130002; Application #  
FY07 – 01303

## SECOND REQUEST FOR INFORMATION

Pursuant to Env – C 204.10 (b), appellant New Hampshire Sierra Club requests the following information from the permittee, Public Service Company of New Hampshire, a party as defined by Env – AC 204.06 (c) (3).

- 1) For the original design of unit (the design that was used for original construction) documents describing:
  - a) Boiler parameters at various conditions including, but not limited to, MCR, any overpressure conditions, and any short-term or emergency conditions. As a minimum these parameters should include:
    - i) superheater outlet flow, temperature and pressure;
    - ii) coal characteristics;
    - iii) coal flow to the boiler;
    - iv) boiler heat input; and,
    - v) boiler efficiency.
  - b) Turbine parameters at various steam flows including, but not limited to, guaranteed, VWO, and VWO at overpressure. These documents should include any turbine cycle heat balances. For each steam flow, the documents should provide:
    - i) the turbine throttle conditions (flow, temperature, and pressure);
    - ii) the condenser backpressure; and,
    - iii) net and gross electric output.
  - c) Generator design parameters (kva and pf)
  - d) Design values of the gross and net electric output of the unit.
- 2) Documents discussing or presenting the results of the tests that were done at the time of the initial startup of the unit and addressed the ability of the unit to produce the design and/or guaranteed levels of:
  - a) Boiler steam output;
  - b) Boiler efficiency;
  - c) Characteristics of and flow of coal to the boiler;
  - d) Turbine main steam or reheat steam throughput;

- e) Heat rate;
  - f) Gross electric output; and
  - g) Net electric output.
- 3) Documents that were generated at any time subsequent to the initial startup of the unit that discuss or present values for possible future changes or past actual changes in the capabilities of the boiler, turbine, generator, or unit. These should include and discussions of:
- a) any changes in the maximum steam flow from the boiler, including any changes in the maximum steam flow at which PSNH operated the boiler, either continuously or under emergency conditions;
  - b) any changes in the turbine throttle pressure at which the unit was operated;
  - c) any changes in the maximum steam flow the turbine would accept with all valves wide open;
  - d) any changes in the pf and/or maximum mva at which the generator could or would be operated; and
  - e) changes in the net or gross capability of the unit.
- 4) Documents that were generated at any time subsequent to initial startup of the unit that discuss capability testing for the unit or present results of any capability test. This should include:
- a) any test results or other capability information provided to a NERC Region or a power pool;
  - b) any descriptions of conditions under which tests should be, or were, done; and
  - c) documents discussing expected or actual results of such tests.
- 5) Documents that were generated at any time subsequent to initial startup of the unit that discuss:
- a) the capability (gross and/or net) of the unit;
  - b) the conditions under which the unit can (could) achieve a given capability;
  - c) any factors or conditions that limit(ed) the capability of the unit; and
  - d) any actual, expected, or potential changes in the capability, and the reasons for those changes.
- 6) Documents that were generated at any time subsequent to initial startup of the unit that contain the results of any heat rate tests, any boiler efficiency tests, or any turbine efficiency tests, and any discussions of expected or actual results of such tests.

- 7) Documents that were generated at any time subsequent to initial startup of the unit that contain or describe the values of the characteristics of a unit to be used in dispatching that unit. Also provide any documents that present or discuss any expected future or past actual changes in the values of those characteristics. The characteristics include, but are not limited to:
  - a) net capability;
  - b) forced outage rate;
  - c) fuel costs;
  - d) variable O&M costs;
  - e) emissions allowances costs; and
  - f) heat rate at various loads.
- 8) Documents that were generated at any time subsequent to initial startup of the unit that contain or describe the dispatch order (or dispatch ladders) for the system.
- 9) Documents that were generated at any time subsequent to initial startup of the unit that contain or describe the characteristics (including unit capability, unit heat rate at various loads, schedules for planned outages, forced outage rate, and the probabilities of various derated states of the unit) that were to be used any computer modeling including:
  - a) system planning/dispatch models;
  - b) models used to estimate the values of generating units; and
  - c) models used to justify or prioritize capital projects at the unit.
  - d) Documents should include any estimated or suggested values for the characteristics that were prepared by engineering or operations, as well as the values that were actually used in the system planning models. If model runs were done using more than one value for any characteristic of a unit, provide the different values and any discussion of the reasons for the differences.
- 10) Documents related to any analyses that were performed of any economic or emissions or regulatory effects of the turbine upgrade project.
- 11) Provide the results (output) for any runs of any system planning models (or capital project evaluation models) during the five years before and the five years after the turbine upgrade project. If there were more than 10 such runs, it would be acceptable to provide just base case runs and any cases where the values of any characteristics of Merrimack 2 differed from the analogous values used in the base cases.
- 12) Documents that were generated at any time subsequent to initial startup of the unit that contain or that discuss expected or predicted future performance of the unit or give numerical values for expected or predicted

future performance of the unit. Provide any documents that discuss goals or targets or plans for future performance of the unit or give numerical values for goals or plans or targets for future performance of the unit. In this context, the future performance measures that are of interest are heat rate, boiler heat input, electric generation, capacity factor, and the various measures of unit availability and reliability.

- 13) Documents, including drawings, related to the design of the new HP/IP turbine. This should include any preliminary designs as well as the design that was adopted.
- 14) Documents that discuss or present plans for post-project testing of the new turbine, and the results of that testing.
- 15) Documents that provide a complete set of GADS data for calendar years 2006 and 2007.
- 16) Documents that detail the maximum hourly main steam flow during calendar years 2006 and 2007.
- 17) Documents that detail the maximum hourly coal feed rate calendar years 2006 and 2007.
- 18) Documents that detail the total megawatt-hours of lost generation due to lack of system demand during calendar years 2006 and 2007.
- 19) Documents that detail the maximum hourly heat input (mmBTU) achieved during calendar years 2006 and 2007.
- 20) Documents that detail the forced outage rate (FOR) for calendar years 2006 and 2007.
- 21) Documents that detail the planned outage rate (POR) for calendar years 2006 and 2007.
- 22) Documents that detail the maintenance outage rate for calendar years 2006 and 2007.
- 23) Documents that detail the equivalent forced outage rate (EFOR) for calendar years 2006 and 2007.
- 24) Documents that detail the utilization rate for calendar years 2006 and 2007.

25) Top 10 contributors to EFOR (include amount in lost mwhrs) during calendar years 2006 and 2007.

26) Documents that list the top 10 contributors to FOR (including amount in lost mwhrs) during calendar years 2006 and 2007.

27) Documents that list of all capital projects performed or expected to be performed during the Clean Air Project period (2008 through 2013) that are expected to maintain or improve unit availability.

Respectfully submitted,

Arthur B. Cunningham  
Attorney for Appellants  
PO Box 511,  
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603-746-2196  
603-491-8629  
[gilfavor@comcast.net](mailto:gilfavor@comcast.net)

NH Registration No. 18301

#### Certificate of Service

I certify that a copy of this Reply was mailed to Gregory H. Smith and Barry Needleman, attorneys for Public Service Company of New Hampshire, 11 South Main Street, Suite 500, Concord, NH 03305; Melissa A. Hoffer, Esq., Conservation Law Foundation, 27 North Main Street, Concord, NH 03301; and Evan J. Mulholland, NH Assistant Attorney General, 33 Capitol Street, Concord, NH 03301, first class mail, postage prepaid, this day of July, 2009.

Arthur B. Cunningham



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**  
***Air Resources Council***

PO Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095  
Appeals Clerk Telephone (603) 271-6072 - TDD Access: Relay NH 1-800-735-2964  
DES Website: [www.des.nh.gov](http://www.des.nh.gov) - Council Website: <http://www.des.nh.gov/councils/>



STATE OF NEW HAMPSHIRE  
**AIR RESOURCES COUNCIL**

**Decision & Order**  
**Requests for Information**

**Docket Nos. 09-10 ARC and 09-11 ARC**

Appeal of NH Sierra Club et al and Conservation Law Foundation  
In Re: March 9, 2009 Temporary Permit TP-0008 PSNH Merrimack Station

**Background:**

Before the Presiding Officer in the above referenced matter are two requests for information submitted by the New Hampshire Sierra Club, the first dated March 18, 2009 and the second dated on or around July 14, 2009, as well as the PSNH objections thereto. The Presiding Officer has reviewed the requests and objections and rules on said requests pursuant to Env-AC 203.06 and Env-AC 205.03.

**Findings and Conclusions:**

The Presiding Officer finds and concludes that the requests for information are not directly related to the matter at hand such that the New Hampshire Sierra Club will be materially prejudiced in the case by a lack of the requested information. The information requested is overly broad and not reasonably limited in scope to the matter on appeal. Furthermore, based on the objections of PSNH, the Presiding Officer finds and concludes that much of the information requested is confidential and privileged. Finally, the Presiding Officer finds and concludes that the information requests are excessively burdensome. Specifically, the volume of records requested is enormous and covers a significant period of time, not related to the matter(s) on appeal. It would take a considerable amount of time to find, organize, and copy said records. Given the lack of relevancy, such requests are, therefore, excessively burdensome.

Docket No. 09-10 ARC – New Hampshire Sierra Club, et al.  
Docket No. 09-11 ARC – Conservation Law Foundation  
Order  
September 11, 2009  
Page 2 of 2

**Order:**

As such, based on the objections filed by PSNH and the conclusions of the Presiding Officer as set forth herein, the requests for information are DENIED.

So Ordered for the Presiding Officer by:  September 11, 2009  
Amanda Samson, Appeals Clerk

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LAW OFFICES  
**ARTHUR B. CUNNINGHAM**  
79 Checkerberry Lane, Hopkinton, NH 03229

April 8, 2009

Certified Mail, Return Receipt Requested

Robert A. Bersak, Registered Agent  
Public Service Company of New Hampshire  
780 North Commercial Street  
Manchester, NH 03101

Re: Notice of Citizen's Suit, 42 U.S.C.7604

Dear Sir:

You are advised that I represent the New Hampshire Sierra Club, 40 North Main Street, Concord, NH 03301. In accordance with 42 U.S.C.7604, you are notified that the New Hampshire Sierra Club intends to file suit in the United States District Court for the District of New Hampshire for violations of 42 U.S.C.7401 et seq., the Clean Air Act. The remedies sought shall include injunction, declaratory judgment and other relief, including the costs of litigation, attorney fees and expert witness fees as provided in 42 U.S.C.7604 (d). Immediate injunctive and other relief may be sought under the provisions of 42 U.S.C.7604 (a) (3) for violations regarding the significant deterioration of air quality and non-attainment.

**VIOLATIONS**

1. Public Service Company of New Hampshire violated 42 U.S.C.7475 (a)(1)-(8). Under the Clean Air Act, an existing major source of regulated pollutants must, prior to undertaking a major modification of the source in an area that attains the National Ambient Air Quality Standards (NAAQS), must obtain a permit under the Prevention of Significant Deterioration (PSD) program. See generally, 40 C.F.R.52.21. The Clean Air Act requires that a source making a major modification must show that the source complies with the ambient air quality levels designed to prevent deterioration of air quality (PSD increments), and, will employ the best available control technology (BACT) for each regulated pollutant emitted in significant amounts. 42 U.S.C. 7475(a)(3) and (a)(4) respectively.

2. Public Service Company of New Hampshire violated 42 U.S.C.7503(a)-(d). Under the Clean Air Act an existing major source of regulated pollutants must, prior to undertaking a major modification of the source in an area that

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does not attain the National Air Quality Standards (NAAQS) as such area is defined in 42 U.S.C.7501 (2), including any area identified in 42 U.S.C.7407 (d)(1), must obtain a permit under the New Source Review (NSR) program. The Clean Air Act requires a source to demonstrate that it will not cause or contribute to emission levels that exceed the permitted allowances under the plan required by 42 U.S.C.7502 (a)-(e); and, that the source will have installed the pollution control technology to comply with the lowest achievable emission rates. 42 U.S.C.(a)(1)(A) and (B).

### FACTUAL HISTORY OF VIOLATIONS

Public Service of New Hampshire, by letter dated January 31, 2008, filed on February 2, 2008, with NH Department of Environmental Services, Air Resources Division, asked for an "expedited regulatory review of the balance of plant projects planned to be completed during MK2's 2008 outage". Exhibit A attached hereto. The letter described the project as the replacement of one of the six steam turbine components and generator repair work. Public Service of New Hampshire represented that the project could be expected to produce an actual net unit output of between 6 and 13 megawatts, an increase necessary to support the large power consumption of the future scrubber system. The company asserted that the work would not increase emissions and attached unverified data tables as support. The company did not provide the engineering, the plans and specifications, and the parts and materials inventory for the turbine and generator work. The letter requesting expedited review was silent on what, if any, work was to be done regarding the steam generating capacity, including the boiler, of the plant.

NH Department of Environmental Services, Air Resources Division, should have, but did not request any engineering or other documentation supporting the claim that the work would not, in fact, increase plant capacity. The Air Resources Division should have, but did not, did not request information regarding previous work done on the plant.<sup>1</sup>

On March 31, 2008, despite the inadequacy of the information supporting the January 31, 2008, request for expedited regulatory review, the Air Resources Division granted the company a waiver of NSR review and notified the company that it had "conditionally determined that NSR permitting requirements do not apply to the planned modifications to MK2". Exhibit B attached hereto. Significantly, the Air Resources Division found that the MK2 overhaul was a "non-routine modification", a finding that categorically triggers NSR/PSD permitting. The Air Resources Division determination

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<sup>1</sup> The work was described in the January 31, 2008, letter requesting expedited review as the "balance of plant projects to be completed during MK's outage."

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regarding the inapplicability of NSR permitting applied to NOx only, based upon the fact that the plant is located in a non-attainment area for ozone.

The Air Resources Division did not examine in any manner whether or not the non-routine modification of MK2 would trigger PSD permitting requirements for the attainment pollutants and whether emissions would comply with the ambient air quality levels designed to prevent the significant deterioration of air quality (PSD increments).

The failure of NH Department of Environmental Services, Air Resources Division to require NSR/PSD permitting, having determined that the project was a "non-routine modification", was an unambiguous violation of the Clean Air Act.

Prior to the April, 2008, outage and work, the company, by letter dated June 6, 2007, filed its Temporary Permit Application for FGD System Installation (scrubber), with the Air Resources Division. Exhibit C attached hereto. The application letter did not refer to, or provide engineering and plans and specifications for the planned non-routine work on MK2 scheduled during the April, 2008, outage. The application stated only that the scrubber project included changes to the exhaust configuration of MK1 to allow for the planned maintenance overhauls on MK2 and the FGD system.

The Air Resources Division did not require the company to include engineering, plans and specifications and materials and parts inventories or other data regarding the overhaul of MK2 in the scrubber permitting process, notwithstanding company claims that the project was required because of the parasitic load of the scrubber. See Exhibit A.

The company, clearly, wanted the public permitting process for the scrubber to be silent, and separate and apart from the expedited review that it requested and obtained regarding the MK2 overhaul; and, the Air Resources Division did not require the combination of the processes.<sup>2</sup>

On March 9, 2009, the Air Resources Division issued Temporary Permit No. TP-008, for the installation of the scrubber. On March 18, 2009, in accordance with New Hampshire law providing for administrative appeals, the New Hampshire Sierra Club appealed the issuance of the Temporary Permit to the Air Resources Council, New Hampshire Department of Environmental

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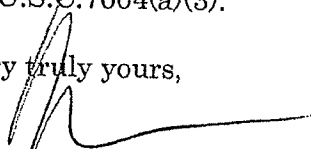
<sup>2</sup> The company asserted in the January 31, 2008, request for expedited review that the MK2 overhaul was necessary to support the large power demand of the scrubber, yet the company claimed in the June 6, 2007, FGD application, that because of the emissions reductions resulting from the scrubber, the project would not be a major modification subject to PSD permitting apparently claiming project netting as provided for in 40CFR 52.21(B)(3). It appears that the company wants it both ways: out for the MK2 overhaul; in for the emissions reductions.

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Services, Docket No.09-10, In the Matter of Temporary Permit TP-0008. In conjunction with its appeal, the New Hampshire Sierra Club: 1] moved for an expedited hearing; 2] moved for the disqualification of Air Resource council members who have a conflict of interest; 3] moved for a stay of the operation of the permit pending production of documents regarding the work at the plant; 4] moved for a stay until such time as the company obtains the required NSR/PSD permits; and, 5] filed a Request for Production of Documents asking for documentation regarding the work at the plant.

The company filed objections to the expedited hearing, the stay request, and filed broad objections to the Request for Information. Unless the New Hampshire Sierra Club obtains the stay and receives the requested documents in a timely manner, the construction project will proceed apace, and the purpose of the administrative appeal will be vitiated. The clear intent of the company is to obfuscate and delay until past the time that any substantive merit hearing can be had before the Air Resources Council. See 42 U.S.C.7604(a)(3).

Very truly yours,



Arthur B. Cunningham

Cc: Administrator, Environmental Protection Agency  
1200 Pennsylvania Avenue, NW,  
Washington, D.C. 20406

Regional Administrator, Environmental Protection Agency  
1 Congress Street, Suite 1100  
Boston, Mass. 02114-2023

Thomas S. Burack, Commissioner  
N.H. Department of Environmental Services  
29 Hazen Drive, Concord, NH 03301