



CONSERVATION LAW FOUNDATION

December 15, 2010

Ms. Debra A. Howland, Executive Director & Secretary
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

Re: DE 10-121

Dear Ms. Howland:

I write to bring to your attention a potential dispute regarding PSNH's production of documents in the above-referenced docket. Enclosed please find recent correspondence between Linda Landis, counsel for Public Service Company of New Hampshire, and me, on behalf of Conservation Law Foundation.

Please do not hesitate to contact me should you have any questions.

Sincerely,

Melissa A. Hoffer, Esq.

cc: Anne Ross, Esq., NHPUC
Suzanne Amidon, Esq., NHPUC
Meredith Hatfield, Esq., OCA



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RHODE ISLAND: 55 Dorrance Street, Providence, Rhode Island 02903 • 401-351-1102 • Fax: 401-351-1130

VERMONT: 15 East State Street, Suite 4, Montpelier, Vermont 05602-3010 • 802-223-5992 • Fax: 802-223-0060



**Public Service
of New Hampshire**

780 N. Commercial Street, Manchester, NH 03101

Public Service Company of New Hampshire
P. O. Box 330
Manchester, NH 03105-0330
(603) 634-2700
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landilt@psnh.com

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The Northeast Utilities System

Linda T. Landis
Senior Counsel

December 2, 2010

Melissa A. Hoffer, Esquire
Conservation Law Foundation
27 North Main Street
Concord, NH 03301-4930

Dear Attorney Hoffer:

I am notifying you by way of this letter that certain documents you requested as an intervenor in Docket DE 10-121 will not be produced. Furthermore, we are requesting the return of documents that were inadvertently provided to you during your visit to Energy Park on Wednesday, November 17th. On behalf of our vendors we ask that you represent that those documents have not been copied nor distributed to anyone, and that you refrain from doing so.

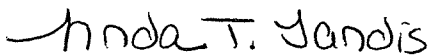
The documents that were inadvertently produced have not been provided to any intervenor nor to the Staff of the Public Utilities Commission and, in fact, have only been reviewed here at Energy Park, but not copied, by the Staff's analyst under the terms of a confidentiality agreement. Even with a confidentiality agreement in place, the Staff's analyst has not been allowed to copy or distribute internally the documents. The Staff has access to view this information based upon its supervisory obligations under RSA 374:3, 374:4, and 374:18. Thus, any production of these confidential business documents would clearly be contrary to the established protocol we have with the Staff.

The documents at issue contain confidential business information that, if released, could be damaging to PSNH and particularly to its vendors in a competitive market since the documents demonstrate technical and proprietary procedures, processes, and operational information, as well as time-sensitive schedules which could conceivably provide a competitor with an advantage and thus negatively impact our customers. The United States Environmental Protection Agency ("EPA") recently reviewed older but very similar outage documents, which PSNH was required to provide to EPA under a Section 114 request for information. EPA determined the documents were exempt from production under the Freedom of Information Act as confidential business information because of the proprietary technical information contained in the reports.

Furthermore, PSNH is prohibited under the terms of confidentiality agreements with the critical vendors involved in outage work from providing this information to a third party. The agreement with Siemens covering the HP/IP repairs, for instance, states that Siemens ("the Contractor") has a proprietary interest in "the processes and procedures used by its personnel in performance of the Agreement....Contractor has a proprietary interest in the manner of performance of the Work, including but not limited to the know-how, processes, methods and techniques employed by Contractor in connection therewith." Unfortunately, the contractual terms prohibiting disclosure were not known by the PSNH representative with whom you spoke when he offered to make copies of certain pages of the reports.

We appreciate your cooperation. Please do not hesitate to contact me (634-2700) if you would like to discuss further.

Yours truly,

A handwritten signature in cursive script that reads "Linda T. Landis".

Linda T. Landis
Senior Counsel

cc: Gerald M. Eaton, Esquire



CONSERVATION LAW FOUNDATION

December 15, 2010

Ms. Linda T. Landis
Senior Counsel
Public Service Company of New Hampshire
P.O. Box 330
Manchester, NH 03105-0330

Re: DE 10-121

Dear Linda:

I have your letter of December 2. As I conveyed in my voice mail message of December 10, I can confirm that, consistent with the terms of the Confidentiality Agreement PSNH entered into with CLF on November 17, CLF has neither copied nor distributed the documents Attorney Eaton provided to me that same day.

As you know, in responses to data requests made in DE 10-121, PSNH represented that it would make available for review at PSNH Energy Park in Manchester the "outage summaries (outage books) for the scheduled maintenance outages that took place at Merrimack, Schiller and Newington Stations in 2009." DE 10-121, Q-STAFF-046 (June 16, 2010). The New Hampshire Public Utilities Commission has made plain that "2009 plant performance, plant outages, replacement power purchases, and other purchases of power and capacity and stranded cost recovery are included in the scope of this docket." DE 10-121, Order No. 25, 132 at 6 (July 20, 2010).

On November 10, I made arrangements with Attorney Eaton to review those documents at PSNH's offices.¹ At no time prior to my review did Attorney Eaton raise the issue of document confidentiality. Instead, Attorney Eaton told me on the 17th when I arrived at PSNH's offices that CLF would need to enter into a Confidentiality Agreement in order to review the documents. I waited while Attorney Eaton drafted the agreement; it had not been prepared in advance of my arrival, despite the fact that a week had passed between scheduling the review and the date of the review. We reached agreement on the terms of

¹ PSNH's data request responses identify Ms. Tillotson as the contact for arranging file reviews, however, Ms. Tillotson never returned CLF's phone calls requesting to schedule a time for review.

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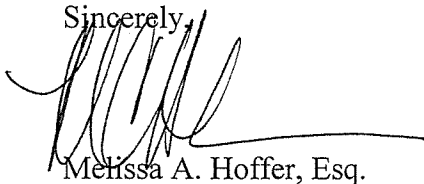
the Confidentiality Agreement, signed it, and I began my review. As requested by Attorney Eaton, I marked pages for copying, and provided them to PSNH legal support staff. I completed my review and before I left, Attorney Eaton provided to me copies of a small number of the documents I had marked. Each is stamped "confidential," and every page of each bears the identifying mark "DE 10-121." At that time, Attorney Eaton also represented that the remainder of the documents would be sent to CLF shortly.² Nearly a month later, PSNH has yet to produce a single one of those remaining documents to CLF.

Instead, PSNH now claims that "certain documents" will not be produced, and requests the return of documents "that were inadvertently provided to you during your visit to Energy Park." There was nothing "inadvertent" about the manner in which documents were provided to CLF. To the contrary, counsel for PSNH actively participated in and oversaw every aspect of the file review and personally provided the copies to me. Further, PSNH fails to specify which of the requested documents will not be produced, makes no effort to identify with specificity which documents it now requests be returned, and offers no alternative means for CLF to analyze the information it is entitled to review as an intervenor in DE 10-121.

CLF requests that PSNH (1) prepare a privilege log setting forth for each requested document identifying information and the basis upon which it is being withheld; (2) identify with specificity the documents it is requesting be returned; and (3) propose an alternative means for CLF to analyze the documents it has requested.

Please contact me should you wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa A. Hoffer", with a long horizontal line extending to the right.

Melissa A. Hoffer, Esq.

cc: Public Utilities Commission

² As PSNH and CLF agreed, photographs, for example, would be redacted from requested documents.