

THE STATE OF NEW HAMPSHIRE  
BEFORE THE PUBLIC UTILITIES COMMISSION

Docket No. DE 09-033

**CONSERVATION LAW FOUNDATION'S REPLY TO**  
**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S**  
**OBJECTION TO PETITION TO INTERVENE**

Conservation Law Foundation ("CLF") hereby replies to Public Service Company of New Hampshire's ("PSNH") objection to CLF's petition to intervene, stating as follows:

1. On March 19, 2009, CLF timely filed a petition to intervene in the above-captioned docket. CLF has a long history of intervening in Public Utility Commission ("Commission") dockets. As set forth in its petition, CLF is a member-supported environmental advocacy organization with members whose substantial interests—as individuals who could be adversely affected by the public health and environmental impacts of the actions for which PSNH seeks financing, and as ratepayers—may be affected.
2. On March 24, 2009, PSNH filed by hand with the Commission an objection to CLF's intervention, and raised its objection during the prehearing conference that took place that same day. CLF was not present at the conference, and was unaware that PSNH intended to object to CLF's intervention. *See* Letter from Melissa Hoffer to Director Howland (March 24, 2009) attached hereto as *Exhibit 1*.
3. CLF understands that the Commission, during the March 24 prehearing conference, indicated that it would be helpful for CLF to identify the number of CLF members located within PSNH's service territory.

4. CLF presently has 104 members who reside in thirty-eight towns where PSNH is the only service provider.<sup>1</sup>

5. As set forth in the Commission's March 6, 2009, Order of Notice ("OON"), this docket involves, *inter alia*, "issues related to RSA 369, *the proposed use of the funds* and whether the issuance of up to \$150 million of long-term debt, the mortgaging of property, the execution of an interest rate transaction and a permanent increase in PSNH's short-term debt limits are *in the public good*." DE 09-033 OON (March 6, 2009) at 2 (emphases added).

6. In the seminal case *Appeal of Easton*, 125 N.H. 205 (1984), the New Hampshire Supreme Court held:

[T]he PUC's authority under RSA chapter 369 is [not] limited to the determination of whether the *terms* of the proposed financing are in the public good. On the contrary, this court long has held that the PUC has a duty to determine whether, under all the circumstances, the financing is in the public good—a determination which includes considerations beyond the terms of the proposed borrowing.

*Appeal of Easton*, 125 N.H. at 213 (emphasis in original). Citing *Appeal of Easton*, the Commission has on numerous occasions stated that "[t]he public good consideration involves looking beyond actual terms of the proposed financing to *the use of the proceeds* and *the effect on rates* to ensure that the public good is protected." *Hampstead Area*

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<sup>1</sup> CLF derived this total based on the PSNH service territory map available at <http://www.psnh.com/SharePDFs/PSNHServiceTerritory.pdf>. The thirty-eight towns are: Antrim, Barrington, Bedford, Bennington, Brookline, Dover, Dublin, Durham, Fitzwilliam, Gilsum, Goffstown, Greenfield, Greenland, Hancock, Harrisville, Hollis, Hooksett, Jaffrey, Keene, Marlborough, Merrimack, Mont Vernon, Nashua, New Ipswich, New London, Newmarket, North Hampton, Peterborough, Portsmouth, Rochester, Rollinsford, Sharon, Sullivan, Troy, Warner, Wentworth, Westmoreland, and Winchester. The total includes only those CLF members residing in New Hampshire towns that are fully covered by PSNH service; the actual total number of CLF members that are PSNH customers is therefore likely higher. For example, seven CLF members reside in the nearly fully PSNH-served town of Hopkinton; since it could not easily be determined whether those members are PSNH customers, they have been excluded from the total.

*Water Co.*, DW 08-088, No. 24,937, slip op. (Feb. 6, 2009) at 14 (emphasis added). *See also, e.g., Atkinson Area Wastewater Recycling, Inc.*, DW 07-131, Order No. 24,899, slip op. (Sept. 25, 2008) at 8 (*citing Appeal of Easton* for same proposition); *Pennichuck East Utility, Inc.*, DW 08-022, Order No. 24,844, slip op. (Apr. 4, 2008) at 3 (same).

Consistent with that longstanding precedent, the Commission's OON expressly provides that this docket involves "issues related to . . . the proposed uses of the funds" associated with PSNH's proposed financing. DE 09-033 OON at 2.

7. This docket involves important considerations regarding whether PSNH's proposed use of financing proceeds is a sound investment and in the public good, including PSNH's continuing use of funds to cover costs associated with "new capital additions." DE 09-033 OON at 1. Such capital additions—which were not defined in the OON—could have significant environmental impacts; modifications other than the scrubber installation mandated by RSA 125-O recently have been made to Merrimack Station that potentially will have significant air pollution impacts. Additionally, on January 21, 2009, PSNH made an interconnection request to the Independent System Operator Administered Transmission System to increase the winter net capacity of a steam turbine unit (likely Merrimack Unit 2) to 353.3 megawatts (an increase of 31.75 megawatts over MK2's current 321.75 winter claimed capacity) by the projected commercial operation date of December 14, 2009. *See Interconnection Requests to the Administered Transmission System* (January 31, 2009) at 4 (queue position 291). Capital additions to enable that very substantial capacity increase are of significant environmental concern, given the global warming implications of increased carbon dioxide emissions. Indeed, any capital additions that have the potential substantially to

extend the expected life of Merrimack Station—the largest single source of carbon dioxide emissions in New Hampshire, and a source of thousands of tons of annual emissions of other air pollutants—is of interest to CLF members and member-ratepayers.

8. PSNH also objects on the grounds that CLF has other fora available to it to address environmental concerns related to Merrimack Station; that CLF's concerns were addressed in Docket No. DE 08-103; and that CLF's participation will impair the orderly and prompt conduct of proceedings in this docket. First, the mechanism available to CLF in this proceeding—reviewing the use of funding and ensuring that the proposed financing is in the public good—is not available to CLF in other fora. Second, CLF was not afforded an opportunity to participate in Docket No. DE 08-103. *See* Letter from Melissa Hoffer to Director Howland (September 12, 2008), attached hereto at *Exhibit 2*. Third, CLF's participation in a number of dockets in recent years has not had the effect of delaying or otherwise interfering with the conduct of proceedings, and there is no basis for such concern here.

9. In light of the foregoing, CLF's "rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding," RSA 541-A:32, I(b), and CLF is entitled to intervene.

WHEREFORE, CLF respectfully requests that the Commission grant its petition for full intervenor status in this proceeding.

Date: April 3, 2009

Respectfully submitted,

  
Melissa A. Hoffer, Esq.  
Conservation Law Foundation  
27 North Main Street  
Concord, NH 03301  
(603) 225-3060

CERTIFICATE OF SERVICE

I hereby certify that on the 3<sup>rd</sup> day of April, 2009, a copy of the Reply to Public Service Company of New Hampshire's Objection to Petition to Intervene by the Conservation Law Foundation was sent electronically, and by First Class Mail, to

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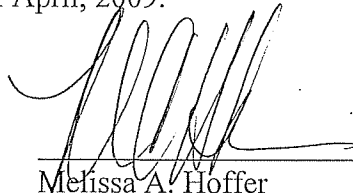
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Dated in Concord, New Hampshire this 3<sup>rd</sup> day of April, 2009.

A handwritten signature in black ink, appearing to read 'M. Hoffer', is written over a horizontal line.

Melissa A. Hoffer  
Vice President and Director  
New Hampshire Advocacy Center  
Conservation Law Foundation  
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mhoffer@clf.org

## **EXHIBIT 1**



# CONSERVATION LAW FOUNDATION

March 24, 2009

By E-Mail

Ms. Deborah A. Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, N.H. 03301-2429

Re: Docket No. DE 09-033, Petition of Public Service Company of New Hampshire  
For Financing Approval

Dear Director Howland:

I write to inform the Commission that Conservation Law Foundation ("CLF") was unable to attend today's prehearing conference in DE 09-033, and we apologize for any inconvenience.

CLF was not aware that Public Service Company of New Hampshire ("PSNH") was planning to object to CLF's motion to intervene, filed with the Commission on March 19, 2009. PSNH's objection was filed with the Commission by hand today; I did not receive a copy of it from PSNH, and did not learn of it until this afternoon from other parties to the docket. My colleague Kristine Kraushaar (on whom apparently the objection was served, though it is not clear how service was made), is ill today and not in the office.

CLF intends to file a response in opposition to PSNH's objection to CLF's motion to intervene.

Thank you for your consideration, and please do not hesitate to call me should you wish to discuss this matter.

Sincerely,

Melissa A. Hoffer  
Conservation Law Foundation  
VP and Director, NH Advocacy Center  
Program Director, Healthy Communities and  
Environmental Justice  
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cc: Service List (via e-mail)

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## **EXHIBIT 2**



## CONSERVATION LAW FOUNDATION

Via Hand-Delivery and E-mail (Commission) and First Class Mail and E-mail (Parties)

September 12, 2008

Debra A. Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite Ten  
Concord, New Hampshire 03301-7319

Re: DE 08-103 – Merrimack Station Scrubber Project

Dear Director Howland:

I write regarding the New Hampshire Public Utilities Commission's (Commission) August 22, 2008, Secretarial letter requesting information from Public Service Company of New Hampshire (PSNH), in connection with PSNH's planned installation of a wet flue gas desulphurization system at Merrimack Station (Scrubber Project).

The Commission's request was sent in response to Northeast Utilities' (PSNH's parent company) disclosure in its August 7, 2008, 10-Q filed with the Securities and Exchange Commission that the Scrubber Project will now cost an estimated \$457 million—an approximately 80 percent increase over the original cost estimate of \$250 million. The Commission's action correctly underscores the important and pressing public policy concerns at issue here, and CLF commends the Commission for initiating its inquiry.

Because this project raises such important policy questions, CLF urges the Commission to publicly notice the docket, and provide the normal procedural vehicles for ensuring public participation. CLF members' "rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding," and thus CLF would otherwise meet the Commission's standard for intervention. *See* RSA 541-A:32.I(b).

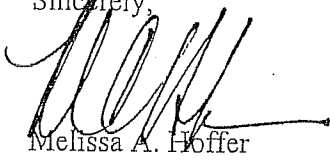
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A robust review of the issues based on input from all relevant parties would assist the Commission in its consideration of the important questions it has posed, including the anticipated effect of the Scrubber Project on energy service rates, and the effect on energy service rates if Merrimack Station is not included among the mix of fossil and hydro facilities operated by PSNH. Most importantly, a broader inquiry would shed light on the question whether there may be other feasible alternatives, employing different technologies, that could achieve the mercury reduction targets more cost effectively. CLF respectfully requests that the Commission assure the participation of those whose vital interests are at stake by publicly noticing the docket.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Hoffer', with a long horizontal flourish extending to the right.

Melissa A. Hoffer

Director and Vice President

New Hampshire Advocacy Center

Copy to: Robert A. Bersak, Esq.  
Meredith A. Hatfield, Esq.