

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 10-122

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
PETITION FOR APPROVAL OF LONG AND SHORT TERM DEBT

PETITION FOR INTERVENTION OF THE NEW HAMPSHIRE SIERRA CLUB

New Hampshire Sierra Club [NHSC], pursuant to the Order of Notice issued by the Public Utilities Commission on June 1, 2010, respectfully petitions to intervene in the captioned case.

STANDING

NHSC, a duly organized Chapter of the Sierra Club, is a non-profit organization whose over 4000 volunteer members in New Hampshire are dedicated to securing a pollution free and healthy environment. The Sierra Club mission statement is: "To explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and, to use all lawful means to carry out these objectives."

Each and every appellant named herein is entitled to the protections and benefits of 41 USC § 7401 et seq. the Clean Air Act and RSA 125-O et seq. New Hampshire Multiple Pollutant Reduction Program, and have, and will in the future, suffer direct and actual adverse affects and injury from air pollution as defined in the Clean Air Act and the New Hampshire Multiple Pollutant Reduction Program.

The individual appellants, members and friends of the New Hampshire Sierra Club, many of whom are PSNH ratepayers, are as follows:

Tyra H. Allgrove, 18 Spring Cove Rd #106, Nashua, NH, 03062, 603-320-6579;
Jim Allmendinger, 88 Province Rd, Strafford, NH, 03884, 603-664-5392;
Barbara Amos, 65 A Laurel Hill Rd., Hollis, NH, 03049, 603-465-7555;
Jerry, Amos, 65 A Laurel Hill Rd., Hollis, NH, 03049, 603-465-7555;
David W. Anderson, 111 Porpoise Way, Portsmouth, NH, 03801, 603-617-0679;
Melissa Bernardin, 20 Fayette St, Concord, NH, 03301, 603-219-0099;
David Borden, PO Box 167, New Castle, NH, 03854, 603-436-4132;
Catherine Corkery, 97 High St, Penacook, NH, 03303, 603-491-1929;
Jerry Curran, 44 Buckridge Dr, Amherst, NH, 03031, 603-673-7996;
Gail Denmark, 37 The Flume, Amherst, NH, 03031, 603-672-1747;

Kurt Ehrenberg, 281 Wallis Road, Rye, NH, 03870, 603-498-2275;
Catherine Goldwater, 149 Broad St, Hollis, NH, 03049, 603-219-0099;
Kary Jencks, 3 Molly Stark Lane, New Boston, NH, 03870, 603-487-2024;
Michael Kaelin, 105 Curtis Brook Rd., Lyndeboro, NH, 03082, 603-654-5948;
Elaine Kellerman, 1406 Alton Woods Dr, Concord, NH, 03301, 913-522-1769;
Dennis Kepner, 105 Mill Rd, Hampton, NH, 03842, 603-926-3051;
Susan Kepner, 105 Mill Rd, Hampton, NH, 03842, 603-926-3051;
Scott Nichols, 227 Shaker Rd., New London, NH, 03257, 603-661-4796;
Cindy Reed, 27 Lovers Lane Rd, Chichester, NH, 03258, 603-798-3712;
Nan Stearns, 31 Fells Drive, Amherst, NH, 03031, 603-673-3730; and,
Pete Stearns, 31 Fells Drive, Amherst, NH 03031 603-673-3730.

MEMORANDUM

In April- May, 2008, Public Service Company of New Hampshire [PSNH] replaced the MK2 turbine at its Merrimack Station generating plant without the public permitting process required by the Clean Air Act.

On March 18, 2009, NHSC filed its Notice of Appeal in Docket No. 09-10, Public Service Company of New Hampshire, Temporary Permit TP 0008, asserting, *inter alia*, that: 1]. PSNH violated the Clean Air Act because it failed to make application for and obtain the permits required by 42 USC 7475 and 42 USC 7503, referred to as PSD/NSR permits, for the replacement of the MK2 turbine and the balance of plant projects; and, 2] the Temporary Permit TP-0008, contained substantial and impermissible flaws detailed in the NHSC comments filed on January 23, 2009. The gravamen of this NHSC assignment of error was that the permit was legally flawed with respect to the hazardous air pollutant mercury [Hg] because the permit does not comply with Clean Air Act 42 USC 4212 and RSA 125-O:11-18.

The Air Resources Council, in Docket 09-10, determined that NHSC had standing to bring its appeal.

During the course of this appeal, NHSC discovered three studies commissioned by PSNH that prove that PSNH engaged in a comprehensive examination of generation upgrade and life extension projects for Merrimack Station. The studies include Merrimack Station Unit 2 Boiler Replacement Feasibility Study, November 2004, by Burns & McDonnell; Preliminary Permit Plan Analysis-Critical Path Issues, Multi-Pollutant Control Strategy Options, July 26, 2005, by GZA; and, Merrimack Boiler Study, February 1, 2007. The studies suggest that PSNH has, or will, engage in generation upgrade, de-bottlenecking and life extension projects that exceed the legislative “public interest” determination of RSA 125-O:11-18.¹ The Burns &

¹ The subject of Public Utilities Commission docket DE 08-103.

McDonnell report explored replacement of the MK2 boiler. The exhaustive Sargent & Lundy study² examined, in detail, the balance of plant projects that may permit MK2 to produce up to an additional 20 MW of generation. The GZA report noted that a “cursory review of the MK2 annual current emission rates shows that a very small increase in actual emissions (less than 1%) is all that would be needed to exceed NSR significant emission levels”. Any plant project that increases emissions carries with it serious Clean Air Act implications, including the necessity of upgrading very expensive pollution control equipment.³

The litigation in Docket 09-10 has been marred by serious and substantial errors of law by the Air Resources Council, including: 1] limiting the scope of the appeal to the narrow question of whether the MK 2 turbine replacement without proper consideration of the Clean Air Act NSR/PSD permitting issues; and, 2] refusal to hear the Clean Air Act 42 USC 4212 and RSA 125-O:11-18 claims regarding the hazardous air pollutant mercury⁴.

Docket 09-10 is not only replete with legal error, but has been tainted by official misconduct that goes to the essential integrity of the New Hampshire environmental appeal process. That concern has been the conduct of Acting Presiding Officer Raymond Donald. NHSC, during the course of the appeal, filed four separate Requests for Information as authorized by rule. PSNH refused to provide a single document, claiming confidentiality. Mr. Donald, demonstrating clear bias in favor of PSNH, denied, without reading the NHSC filings, the first three of the NHSC Requests for Information. It was only after NHSC pointed out to Mr. Donald that PSNH had relied on the Sargent & Lundy report in official filings in both the Air Resources Division and the Public Utilities Commission, that he ordered PSNH to produce the study.⁵

In October, 2009, NHSC discovered that Mr. Donald was a former PSNH employee; that he had filed inadequate financial disclosure with the New Hampshire Secretary of State; and, that he failed to disclose his PSNH employment history notwithstanding repeated NHSC Motions to Disqualify him based on his manifest bias. It was only after a NHSC reminder to PSNH counsel of their duty of candor to the tribunal was Mr. Donald’ employment disclosed.

² The copy produced by PSNH pursuant to NHDES-ARC Order was the 4th, heavily redacted version. NHSC has a Motion pending in 09-10 ARC to produce all, un-redacted versions of the study.

³ NHSC submitted these studies to the Public Utilities Commission in informational docket DE 08-103. The studies were sequestered by PUC staff without NHSC permission. See Puc 201.04.

⁴ The refusal of the Air Resources Council to hear the mercury issues is inexplicable. The putative PSNH reason for Temporary Permit TP-0008 [scrubber] is to reduce mercury emissions as mandated by RSA 125-O:11-18.

⁵ Mr. Donald granted the Fourth NHSC Request, which resulted in the PSNH production of the heavily redacted 4th version of the Sargent & Lundy study which PUC staff sequestered in DE 08-103.

After the Air Resources Council issues its final order, NHSC will appeal the errors of law and ask the New Hampshire Supreme Court to scrutinize the conduct of Mr. Donald, which has poisoned the entire process.

In early 2009, after NHSC filed its 09-10 appeal to TP-0008, the United States Environmental Protection Agency, Region 1, Boston, Massachusetts, filed a data request on PSNH pursuant to Clean Air Act 42 USC 7414. The comprehensive 114 request asks for documents relating to Merrimack Station, including information regarding plant modifications, generation upgrades and life extension projects. PSNH filed extensive objections to the request, claiming confidential business information [CBI].⁶ Region 1, as of June 22, 2010, over a year after its 114 request, has not yet completed its CBI review.⁷

On March 25, 2010, NHSC filed its Notice of Appeal, in Docket No.10-06, to the issuance of the PSNH Merrimack Station, Proposed Title V Operating Permit FY 96-TV048, asserting *inter alia* that: the Title V Permit should be vacated because the NHDES-ARD administrative record is devoid of facts demonstrating that PSNH has complied with Clean Air Act, including 42 USC 7411, 42 USC 7475 and 42 USC 7503, the provisions requiring NSPS, NSR and PSD permitting, together with corresponding improvements in control technologies, for NO_x and particulates; that the Title V is legally flawed with respect to the hazardous air pollutant mercury [Hg] because it does not comply with Clean Air Act 42 USC 4212 and RSA 125-O:11-18; and, that the Final Regional Haze SIP and the Title V Permit does not contain appropriate BART emission limits.⁸

Clean Air Act 42 USC 7661d provides for an administrative appeal to the Administrator, United States Environmental Protection Agency, Region 1, if a party is not satisfied with the Air Resources Council disposition of the issues raised in a Title V appeal. NHSC fully intends to file an appeal if the Air Resources Council errs in the appeal process.

Both Air Resources Council cases, 09-10 and 10-06, are pending.

NHSC plans to pursue its legal remedies until such time PSNH provides all the information that will permit a full and fair determination, on the merits, of whether or not it has complied with its responsibilities under the Clean Air Act and the New Hampshire Multiple Pollutant Reduction Program.

⁶ NHSC filed a FOIA on Region 1 which resulted in the Burns & McDonnell and GZA reports. NHSC will press its FOIA claims, including appeals if necessary, once Region 1 completes its CBI review.

⁷ Region 1 advises that the data request and CBI review is the largest it has ever undertaken.

⁸ Merrimack Station is the largest single contributor to regional haze in New Hampshire.

NHSC will ask the Public Utilities Commission to do no less before it authorizes this multi million dollar funding request.

In accordance with RSA 541-A:32 and Puc 203.17, NHSC is entitled to intervene in this docket. The rights, duties, privileges, immunities and other substantial interests of NHSC and its members and friends may be affected by this proceeding.

NHSC intervention will not impair the interests of justice and nor the prompt conduct of the proceedings. On the contrary, justice will be served by the conduct of a full, open and transparent examination of the facts regarding PSNH compliance with the Clean Air Act and the New Hampshire Multiple Pollutant Reduction Program.

Wherefore, NHSC requests that it be authorized to intervene in this docket, together with whatever other relief may be proper in the premises.

Respectfully submitted,

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No.18301

Certificate of Service

Petitioner served notice of the filing of this Petition pursuant to Puc 203.17.

Arthur B. Cunningham