



**Public Service  
of New Hampshire**

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A Northeast Utilities Company

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January 29, 2014

Ms. Debra A. Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 Fruit Street, Suite 10  
Concord, New Hampshire 03301

**Re: Docket No. DE 11-250, Public Service Company of New Hampshire,  
Investigation of Scrubber Costs and Cost Recovery  
Comments of Attorney Arthur B. Cunningham**

Dear Director Howland:

The Commission has received two letters from Attorney Arthur B. Cunningham for inclusion in this docket pursuant to Rule Puc 203.18, "Public Comment" (letters dated October 8, 2013 and January 23, 2014). PSNH seeks to clarify the issues raised by Attorney Cunningham's two letters, which were submitted not just to the Commission, but also to the Legislature.

As Attorney Cunningham notes, in the earlier stages of the Commission's proceedings regarding PSNH's Scrubber Project at Merrimack Station, he was counsel of record for the New Hampshire Sierra Club. Attorney Cunningham also represented the Sierra Club in various appeals concerning Merrimack Station before the New Hampshire Supreme Court and the Air Resources Council. More recently, the Sierra Club has been represented by Attorney Zachary M. Fabish; Attorney Cunningham's last pleading of record at the Commission regarding the Scrubber Project occurred on July 8, 2010, in Docket No. DE 08-103. Thus, Attorney Cunningham has not participated in the Commission's Scrubber proceedings for nearly four years.

During that four-year period, many events have occurred. The Scrubber was successfully completed and placed into operation in September, 2011; the Scrubber has achieved emissions reductions that exceed the requirements established by the Legislature in the Scrubber Law; as a result of the installation of the Scrubber, Merrimack Station is operating during the record-setting arctic temperatures New England has experienced this winter ensuring that the lights remained on throughout New Hampshire and New England; the Commission's outside engineering consultant, Jacobs Consultancy Inc., completed its review of PSNH's actions to fulfill the Scrubber Law's mandate, finding that PSNH's actions were both reasonable and

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prudent; the Commission's Audit Staff performed a financial investigation of every dollar spent on the Scrubber Project and prepared an extensive audit report; the Commission has provided Staff and parties to this proceeding with a wide-ranging and multi-year discovery period during which PSNH responded to many hundreds of questions, created a document room housing tens of thousands of pages of Scrubber Project contract documents and engineering drawings, and had to produce its President and Chief Operating Officer, Gary Long, for a deposition where Mr. Long was subject to questioning by Attorney Cunningham's former client, as well as the other parties to this proceeding.

As a result of Attorney Cunningham's four-year absence from the Scrubber Project proceedings, it is understandable that he is not aware that some of the allegations contained in his letters are incorrect; however, PSNH cannot understand why he continues to raise other allegations.

In both of his letters, Attorney Cunningham alleges that no examination has been made of the exact destination of the \$422,000,000 PSNH claims was spent on the scrubber and it is uncertain if all the money was actually spent on the scrubber project. This allegation is incorrect. As noted above, the Commission's Audit Staff has conducted a detailed financial investigation regarding every dollar included in the Scrubber Project. The Audit Staff prepared an extensive audit report. That report was made available to every party of record in this proceeding, and is publically available as Attachment SEM-10 to the testimony of Mr. Steve Mullen, Assistant Director, Electric Division of the PUC in this proceeding. In addition, the Commission adjusted the procedural schedule for this docket to ensure that Staff and the other parties (including his client, the Sierra Club) had ample time to review the Audit Staff's report and to ask PSNH discovery questions related thereto. Thus, Attorney Cunningham's allegation that no one has examined where and how the \$422 million of Scrubber Project costs were spent is incorrect.

Attorney Cunningham alleges that the history of the scrubber litigation suggests that some of the Scrubber Project's \$422,000,000 cost was spent on life extension and generation upgrades at Merrimack Station. That is incorrect. The Staff Audit report found no such spending on life extension or generation upgrades.

Attorney Cunningham alleges that PSNH prevented discovery of the engineering details of the project. As noted earlier, PSNH created a document room to house the thousands of pages of contract documents and engineering drawing and specifications related to the Scrubber Project. The Commission's Staff and all the parties to this proceeding had access to that document room, which has been open for over a year and a half and located in Concord for the convenience of the participants to this proceeding. Thus, Attorney Cunningham's allegation that PSNH has prevented discovery of the engineering details of the Scrubber Project is incorrect.

Attorney Cunningham alleges that information provided by PSNH to the Commission's outside expert, Jacobs Consultancy, was not available to intervenors or to the Commission Staff. That is incorrect. His client, the Sierra Club, in data request CLF-NHSC-03-002, asked:

*Please produce all material provided or made available to Jacobs by PSNH in response to discovery requests, including but not limited to the "almost 3,000 pages" of material cited by Jacobs on page 8 of the Jacobs Report.*

PSNH's response thereto dated September 27, 2012 was:

*PSNH provided Jacobs Consultancy with thousands of pages of documents. Interspersed throughout those documents are material for which the Commission has granted confidential treatment per Order No. 25,332. Access to this material will be provided to Staff, OCA, and parties who have executed nondisclosure agreements. Please contact Elizabeth Tillotson at PSNH, 603-634-[xxxx], who will provide instructions on how to access this material.*

Thus, the Commission Staff and the other parties to this proceeding have had access to the information provided to Jacobs Consultancy since September of 2012.

Attorney Cunningham alleges that PSNH replaced a turbine at Merrimack Station with a new, more efficient turbine, without any public process. He claims that in preparation for hearing in Air Resources Council ("ARC") docket 09-10, he "discovered" the turbine replacement project. Contrary to Attorney Cunningham's allegations, prior to the replacement of that turbine PSNH notified the Department of Environmental Services as required by New Hampshire law. Moreover, Attorney Cunningham knows that to be the case -- his own "Notice of Appeal" to the ARC in Docket No. 09-10 filed on behalf of the Sierra Club expressly notes that PSNH requested regulatory review of the turbine replacement project by the Air Resources Division of the Department of Environmental Services:

*On February 4, 2008, separate from and after the Temporary Permit Application was filed, PSNH submitted a letter to NHDES-ARD requesting an "expedited regulatory review" of a plant project to be completed on Unit #2 during the 2008 outage. The project involved the replacement of one of the six steam turbine components. The project was expected, per a contract guarantee, to produce an additional 6.5 megawatts of electricity, with an actual net unit output of between 6 and 13 megawatts. Exhibit F attached hereto.*

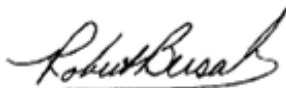
New Hampshire Sierra Club Notice of Appeal, ARC Docket No. 09-10, March 18, 2009, at p. 3

Since Attorney Cunningham has admitted in his own pleading that PSNH had sought regulatory review of the turbine replacement project from the state's Department of Environmental Services over a year before his ARC appeal, his recent implication that PSNH had somehow failed to comply with the law and his allegation that he "discovered" that project are preposterous.

Attorney Cunningham states that he obtained documents that prove PSNH engaged in a comprehensive study of life extension projects for Merrimack Station. That is correct -- PSNH did study potential projects at Merrimack Station. But, contrary to Attorney Cunningham's implication, there is nothing underhanded or otherwise sordid about a utility investigating whether there are ways of providing utility service to its customers on a more economic basis over the long term. Indeed, the Commission would likely question the prudence of a utility that does not routinely perform such studies.

PSNH hopes that this response clarifies the issues raised by Attorney Cunningham in his two letters.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Bersak". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping underline.

Robert A. Bersak  
Assistant Secretary and  
Chief Regulatory Counsel

cc: Service List, Docket No. DE 11-250  
Representative David Borden  
Senator Jeb Bradley  
Arthur B. Cunningham, Esq.