

**THE STATE OF NEW HAMPSHIRE**

**before the**

**PUBLIC UTILITIES COMMISSION**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

Docket No. DE 11-250

Investigation of Scrubber Costs and Cost Recovery

and

Docket No. DE 14-238

Determination Regarding PSNH's Generation Assets

**Objection of Public Service Company of New Hampshire**

**to**

**Motion for Reconsideration of Terry Cronin**

Pursuant to Puc 203.07(f), Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH" or "Eversource" or the "Company") hereby objects to intervenor Terry Cronin's November 6, 2015, Motion for Rehearing ("Motion") of Order Nos. 25,831 and 25,837. The Motion claims Mr. Cronin is entitled to the relief sought because his "rights as an intervenor have been substantially impaired by the limitations imposed by those orders." Motion at 1. Such relief is unwarranted.

The Motion merely reasserts unsupported allegations and speculation espoused by Mr. Cronin and/or his counsel personally or on behalf of others on numerous occasions in these and other proceedings over the past 6½ years and requests a different outcome, fails to note any good reason for the relief requested, fails to identify specific matters that were "overlooked or mistakenly conceived" by the Commission, and fails to note any other legal basis for the relief requested.

In support of this Objection, PSNH states as follows:

1. Intervenor Cronin claims he is entitled to rehearing of Order Numbers 25,831 and 25,837 because his “rights as an intervener have been substantially impaired by the limitations imposed by those orders.” Motion at 1. By Order No. 25,831 issued in Docket No. DE 11-250, the Commission granted Mr. Cronin’s petition for intervention in that docket, but, per the authority granted by RSA 541-A:32, III imposed conditions upon his participation in that proceeding. In Order No. 25,837 issued in Docket No. DE 14-238, the Commission denied a pair of motions to compel filed by Mr. Cronin based primarily on lack of relevancy of the information sought. The Commission correctly decided both Orders, and the Commission’s actions are supported by fact and law.

2. The Motion asserts a litany of conspiracy theories alleging that PSNH used the installation of the scrubber at Merrimack Station as a smokescreen for “generation upgrades and other projects beyond the scrubber itself.” Motion at 2. The Motion also complains about “secrecy” arising from the request for confidentiality regarding certain data. *Id.* at 4. Intervenor Cronin and/or his counsel, personally or on behalf of others, have repeatedly asserted the same matters set forth in the Motion on many prior occasions, in diverse venues and proceedings. *See, e.g.:*

- a. NHPUC Docket No. DE 08-103, “Investigation of PSNH Installation of Scrubber Technology Station
  - i. [Motion](#), NH Sierra Club, May 24, 2010 (filed by Attorney Cunningham) (“Petitioner, New Hampshire Sierra Club has reason to believe that Public Service Company of New Hampshire is engaged in a major life extension project at the 50 year old Merrimack Station; a project that exceeds the ambit of RSA 125-O, which requires only that Public Service Company of New Hampshire install flue gas desulphurization equipment. New Hampshire Sierra Club believes that Public Service Company of New Hampshire is in the process of upgrading the plant generation capacity and incrementally de- bottlenecking the balance of plant equipment, all under the guise of the scrubber legislation.”)
  - ii. [Reply to Objection](#), NH Sierra Club, June 4, 2010 (filed by Attorney Cunningham) (“RSA 125-O: 13, IV is the predicate for the NHSC Motion. This statutory language demonstrates the critical relevance of the Burns & McDonnell, GZA and Sargent & Lundy studies. The studies were an investigation of plant generation upgrades and the Clean Air Act permitting consequences. The Burns & McDonnell report explored replacement of the MK2 boiler. The exhaustive Sargent & Lundy study examined, in detail, the balance of plant projects that may permit MK2 to produce up to an additional 20 MW of generation.”)
  - iii. [Response to PSNH Confidentiality Claims](#), NH Sierra Club, July 7, 2010 (filed by Attorney Cunningham) (“The three studies: ‘Merrimack Station Unit 2 Boiler Replacement Feasibility Study, dated November, 2004, prepared by Burns & McDonnell; ‘Preliminary Permit Plan Analysis-Critical Path Issues, Multi-Pollutant Control Strategy Options’, dated July 26, 2005, prepared by GZA

GeoEnvironmental, Inc.; and, 'Merrimack Boiler Study', dated February 1, 2007, prepared by Sargent & Lundy, LLC, are comprehensive evaluations of generation upgrade and life extension projects for Merrimack Station, together with the environmental permitting implications of those projects, of the 60 year old coal fired power plant owned by Public Service Company of New Hampshire [PSNH].)"

- iv. See also [Response of PSNH to Motion of Sierra Club](#), June 1, 2010.
- b. NHPUC Docket No. DE 11-250, "Investigation of Scrubber Costs and Cost Recovery"
- i. [Comment of Arthur Cunningham](#), Docket No. DE 11-250, October 8, 2013 (docketed October 10, 2013) ("One, no examination has been made of the exact destination of the \$422,000,000 PSNH claims was spent on the scrubber and if all the money went to the scrubber. Two, the discovery history of the scrubber litigation suggests that some of the \$422,000,000 was spent on life extension and generation upgrades at Merrimack Station. The concern is that the substantial increase in costs of the scrubber project are attributable to plant life extension projects, including generation upgrades, that were not required by RSA 125-O. RSA 369-B:3-a does not permit modification of generation without a public interest determination by the Commission. No such determination has been made.")
  - ii. [Comment of Arthur Cunningham](#), Docket No. DE 11-250, January 23, 2014 ("My concern is that the substantial increase in costs of the scrubber project are attributable to plant life extension projects, including generation upgrades, that were not required by RSA 125-O.")
  - iii. [Comment of Arthur Cunningham](#), Docket No. DE 11-250, February 4, 2014 ("The secrecy of the PSNH engineering documents available only to those parties willing to sign a confidentiality agreement vitiates any ability to cross-examine the testimony of those describing the work done, including, but not limited to the Jacobs Consultancy testimony.")
  - iv. See also [Response of PSNH to Comments of Attorney Arthur B. Cunningham](#), January 29, 2014
- c. NHPUC Docket No. DE 10-121, "Reconciliation of Energy Service and Stranded Costs"
- i. [Petition For Intervention Of The New Hampshire Sierra Club](#), June 23, 2010 (filed by Attorney Cunningham, raising issues related, *inter alia*, to "The replacement of the MK2 turbine, together with the generation upgrade resulting from the turbine replacement and balance of plant projects, including the work done during the extensive outages in 2008 and 2009, have substantial Clean Air Act and Multiple Pollution Reduction Programs implications.")

- d. NH Air Resources Council, Docket No. 09-10 ARC (filed by Attorney Cunningham)
  - i. [Notice of Appeal](#), New Hampshire Sierra Club, et al., March 18, 2009 (filed by Attorney Cunningham). (“The April, 2008, turbine and generator work was integral to the scrubber project, and, should have been included in the construction permit process for Temporary Permit TP- 0008. The February 4, 2008, PSNH letter to NHDES – ARD described the turbine and generator work as ‘vital’ to the scrubber project because of the large power consumption of the scrubber system. In the June 7, 2007, Temporary Permit Application for FGD System Installation, PSNH states that it will change the exhaust configuration of Unit #1 so that Unit #1 can operate separately during annual maintenance overhauls of Unit #2. PSNH notes that the overhauls will occur simultaneously with the scrubber installation. The exhaust piping project was a major undertaking intended to allow long term shutdowns of MK2 for the major modifications of MK2, all as part of and integral to the scrubber project. The PSNH strategy of separating the construction permitting process from the integral unpermitted overhaul of the plant generating capacity is a violation of the Clean Air Act, 42 USC § 7455 and 7503, and EnvA 623.01 and 623.02.”)
  - ii. *See also* [NHARC Decision on Appeals](#), September 20, 2010; and, [NHARC Decision and Order on Pending Motion for Reconsideration-Rehearing](#), December 23, 2010.
  
- e. NH Air Resources Council, Docket No. 10-06 ARC (filed by Attorney Cunningham)
  - i. [Notice of Appeal](#), New Hampshire Sierra Club, et al., March 25, 2010 (filed by Attorney Cunningham). (“New Hampshire Sierra Club, in its appeal before the Air Resources Council in Docket No. 09-10 and 09-11, In the Matter of Temporary Permit TP-0008, and as a result of a Freedom of Information Act request on United States Environmental protection Agency, Region 14, has discovered very important documents that reveal that Public Service Company of New Hampshire engaged the services of consultants Burns & McDonnell; Sargent & Lundy; and, GZA GeoEnvironmental, Inc. Burns & McDonnell examined options for re-powering MK2 with the addition of a new boiler of higher steaming capacity [365 MW gross] and a retrofit of the existing MK2. The study includes capital cost projections for the options: \$413,683,000 for the boiler replacement and \$139,476,000 for the steam generator modifications [both include the scrubber]; Sargent & Lundy examined operational efficiency improvements that would lead to the recovery of generating capacity, including operating MK2 at 5 O/O overpressure, a condition included in the original design basis, an increase in firing rate that could increase gross capacity to 12-17MW in the winter and spring and 9-13 MW during the summer.”)
  - ii. *See also* [NHARC Decision & Order on Appeal](#), June 20, 2011.

3. The Motion alleges that “The PSNH responses to the Data Requests [regarding ‘major RFPs and contracts’ for the scrubber] are secret, not available to the public. Further, the responses to the Data Requests were not disclosed to the Commission or Commission staff.” Motion at 4.

- a. As Mr. Cronin was not an intervenor in Docket No. DE 11-250 until two weeks ago, one might think it is not surprising that he or his counsel is unaware PSNH created an extensive document data room containing all RFPs, responses thereto, and contract documents relating to the scrubber, with the contents of that room available to Commission Staff and other intervenors pursuant to the terms of Puc 203.08. (Indeed, Commission Staff availed itself of the opportunity to visit that document room, contrary to the allegation in the Motion.) However, counsel for intervenor Cronin was indeed aware of the document room’s availability. In the January 29, 2014, [Response of PSNH to Comments of Attorney Arthur B. Cunningham](#), PSNH expressly stated that it had “created a document room housing tens of thousands of pages of Scrubber Project contract documents and engineering drawings...” and “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.” Thus, despite actual knowledge of the existence of that document room, those same allegations form the basis of the instant Motion.
- b. What is surprising is the claim of wrong alleged in the Motion that the responses to those data requests were not disclosed “to the Commission.” Discovery is not a matter of record in a Commission proceeding unless and until it is marked as an exhibit and admitted into the record by the Commission. “Responses to data requests are not considered formal pleadings and should not be filed with the Executive Director.” [PUC Practice Guide - Informal Guide to Commission Proceedings](#). Hence, any “disclosure” of the “responses to the Data Requests” to the Commission was unnecessary, would have been improper, and therefore provide no basis for the requested relief.

4. Pursuant to [RSA 541:3](#), the Commission may grant rehearing or reconsideration when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding, see [O’Loughlin v. N.H. Personnel Comm’n](#), 117 N.H. 999, 1004 (1977), or by identifying specific matters that were “overlooked or mistakenly conceived” by the deciding tribunal. [Dumais v. State](#), 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. See [Connecticut Valley Electric Co.](#), Order No. 24,189, 88 NH PUC 355, 356 (July 3, 2003); [Comcast Phone of New Hampshire](#), Order No. 24,958 (April 21, 2009); and [Public Service Co. of New Hampshire](#), Order No. 25,168 (November 12, 2010).

5. The Motion fails to state good reason for rehearing or reconsideration. As demonstrated by the myriad citations to previous dockets and proceedings where the same or similar issues were raised, the

Motion fails to state any new evidence providing the “good reason” for rehearing required by RSA 541:3. The Motion falls back on the same arguments made in all the previous proceedings. As the Commission noted in Order No. 25,837, “The issue of the 2008 turbine is settled.” Order No. 25,837 at 8. The issue, regardless of Mr. Cronin’s arguments, is closed.

6. As also demonstrated by the myriad citations to previous dockets and proceedings where the same or similar issues were raised, there are no matters that were overlooked or mistakenly conceived.

7. Further, Mr. Cronin’s repetition of arguments from the above-referenced previous dockets and proceedings where the same or similar issues were raised demonstrate that the Motion merely reasserts prior arguments in search of a different outcome.

8. Mr. Cronin did not participate in the comprehensive hearings on the scrubber held in Docket No. DE 11-250. Attorney Cunningham also did not intervene in that proceeding, although he was well aware of that proceeding and filed the public comments cited above long before hearings took place. Failure to intervene in a proceeding in a timely manner does not provide a basis for an untimely reopening of the extensive record that was developed in that proceeding. Even parties entitled to a grant of intervenor status under [RSA 541-A:32](#) as a matter of right lose that privilege if they fail to submit their intervention petition “at least 3 days before the hearing.” [RSA 541-A:32](#), I,(a). Mr. Cronin’s petition for intervention in Docket No. DE 11-250 was filed on July 7, 2015 – two hundred sixty six (266) days after the start of substantive hearings in that proceeding. Granting permission to intervene at that late date with the conditions set forth in Order No. 25,831 was not unreasonable and those conditions were legally permissible per RSA 541-A:32, III.

9. In addition to the standard reasons for rejecting a motion for rehearing, the instant Motion also raises considerable estoppel issues, including res judicata, collateral estoppel and issue preclusion. As the myriad citations provided above demonstrate, the allegations contained in the Motion have been aired over and over, in a variety of venues. At some point, continued litigation becomes frivolous. That point occurred long ago regarding the matters asserted in the Motion.

10. For the reasons set forth above, the Motion’s request for relief regarding Order No. 25,831 in Docket No. DE 11-250 should be denied.

11. The Motion addresses alleged deficiencies regarding Order No. 25,831 in Docket No. DE 11-250, but fails to specify any deficiencies regarding the Commission’s actions in Order No. 25,837 issued in Docket No. DE 14-238. Therefore, the Motion fails to comply with the requirement in RSA 541:3 requiring the filing of a Motion for Rehearing “specifying in the motion all grounds for rehearing.” On that basis alone, the Motion should be denied as to Order No. 25,837.

12. Further, Order No. 25,837 determined that various discovery questions submitted by Intervenor Cronin were not relevant to Docket No. DE 14-238, therefore denying his Motion to Compel. Nothing in his Motion provides any basis for altering that determination. The New Hampshire Supreme Court has

ruled:

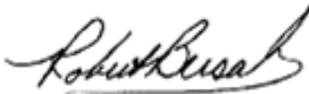
Although discovery rules are to be given a broad and liberal interpretation, the trial court has discretion to determine the limits of discovery. *Scarborough v. R.T.P. Enterprises, Inc.*, 120 N.H. 707, 711, 422 A.2d 1304 (1980). A party's request for information must appear relevant and "reasonably calculated to lead to the discovery of admissible evidence." Super. Ct. R. 35 b(1); *Scarborough*, 120 N.H. at 711, 422 A.2d 1304. The trial court, therefore, is permitted to keep discovery within reasonable limits and avoid "open-ended fishing expeditions" or harassment to ensure that discovery contributes to the orderly dispatch of judicial business. *Robbins v. Kalwall Corp.*, 120 N.H. 451, 453, 417 A.2d 4 (1980); *Hartford Accident Indem. Co. v. Cutter*, 108 N.H. 112, 114, 229 A.2d 173 (1967); *Riddle Spring Realty Co. v. State*, 107 N.H. 271, 278, 220 A.2d 751 (1966).

[New Hampshire Ball Bearings, Inc. v. Jackson](#), 158 N.H. 421, 429-30, 969 A.2d 351, 360 (2009). The Commission properly exercised its discretion regarding the relevancy of the information sought; nothing in his Motion provides any basis for altering that determination.

**WHEREFORE**, PSNH respectfully requests that this Commission deny Mr. Cronin's Motion for Reconsideration.

Respectfully submitted this 12<sup>th</sup> day of November, 2015.

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

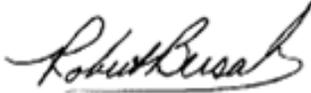
By:  \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 12, 2015, I served an electronic copy of this filing with each person identified on the Commission's service list for Docket Nos. DE 11-250 and DE 14-238 pursuant to Rules Puc 203.02(a) and Puc 203.11(c).



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