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June 25, 2010

Re: DE 08-103, Investigation of Public Service Company of New Hampshire's Installation of Scrubber Technology at Merrimack Station

To the Parties:

On April 9, 2010, the New Hampshire Sierra Club (Sierra Club) submitted comments in the above referenced matter. The Sierra Club's comments were accompanied by exhibits consisting of studies prepared by Burns & McDonnell, GZA GeoEnvironmental, and Sargent and Lundy, LLC. Each of the studies bore notations indicating that they were confidential. Accordingly, the documents were placed in the docket file in Docket No. DE 08-103 and a notation that the documents were confidential was made in the docket book (the official record of documents filed in a proceeding) on April 9<sup>th</sup>, which was posted to the Commission's web site.

On April 15, 2010, the Sierra Club submitted a letter claiming that the posting of the April 9<sup>th</sup> submission on the Commission's web site was incomplete in that the exhibits were not included. The Sierra Club requested that the materials be "promptly posted to Docket No. 08-103." The Sierra Club also argued that the Commission erred in treating the documents as confidential and separating the studies from the transmittal letter before posting to the Commission's web site. According to the Sierra Club, the Burns & McDonnell and GZA GeoEnvironmental studies were obtained by the Sierra Club pursuant to a Freedom of Information Act request filed on the United States Environmental Protection Agency, Region 1, and the Sargent and Lundy, LLC study was produced pursuant to a March 10, 2010 order of the Air Resources Council in Docket Nos. 09-010 and 09-011.

In a Motion dated May 24, 2010, the Sierra Club sought to enter the studies into the "public record in this case." PSNH objected to the Motion on June 1, 2010 and Sierra Club responded on June 6, 2010. In the first instance, it should be noted that there appears to be some confusion about the Commission's administrative procedures for handling documents and there appears to be some additional confusion concerning the use and definition of terms. By way of clarification, any document filed with the Commission is a public or governmental record and is subject to public inspection unless it is found to be confidential and exempt from public disclosure. Puc 201.04 and RSA 91-A:1-a, 4, and 5.

What appears to be at issue here is whether the studies in question are confidential, as is indicated on the documents, or whether those documents are available for public review either in person or through the Commission's website. First, Attorney Cunningham represented that the documents have already been made public and thus should not be treated as confidential. However, because Sierra Club did not submit any documentation to that effect, such as the letters of transmittal from the agencies releasing the documents, the Commission will afford PSNH the opportunity to make a showing by July 1, 2010 that the documents are entitled to confidential treatment.<sup>1</sup> In the absence of such a showing, the studies will be deemed non-confidential and made available for public inspection in the form in which they were received. Second, because electronic versions of the documents, which are voluminous, were not provided, they will only be available for public inspection at the Commission (unless, of course, the Commission finds that they are exempt from public disclosure). If the Sierra Club seeks to have the documents posted to the Commission website it should deliver electronic versions.

As to other matters raised in the numerous exchanges between the Sierra Club and PSNH, they are either not ripe or go beyond the scope of Docket No. DE 08-103. As set forth in Order No. 24,898 (September 19, 2008) and in a subsequent letter dated February 19, 2010 citing the terms of that Order, the Commission stated that in Docket DE 08-103 it would continue its "review of documents provided by PSNH, require additional documents as necessary and keep this docket open to monitor PSNH's actions as it proceeds with installation of the scrubber technology." Thus, the Commission limits its action today to determining that the Burns & McDonnell, GZA, and Sargent & Lundy documents will be maintained in the docket file in DE 08-103, that the documents will be available for public viewing upon resolution of confidentiality issues, and that the documents will be posted to the Commission website if an electronic version is supplied and it is clear that the documents are not confidential. All other arguments raised or requests made by the Sierra Club and PSNH are dismissed.

Sincerely,



Debra A. Howland  
Executive Director

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<sup>1</sup> The showing should be made pursuant to Puc 203.08 (a) and (b).