

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire
Merrimack Station Scrubber Project
Request for Information

Docket No. DE 08-103

OBJECTION OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
TO
SIERRA CLUB'S
REPLY TO OBJECTION

Public Service Company of New Hampshire (hereinafter "PSNH" or "the Company") hereby objects to the "Reply to Objection" filed by the New Hampshire Chapter of the Sierra Club (hereinafter "Sierra Club") on June 4, 2010. In that Reply, the Sierra Club states that it "respectfully demands" that the Public Utilities Commission: enter certain Burns & McDonnell, GZA, and Sargent & Lundy studies to the public record in this case; expand this docket to examine alleged "comprehensive life extension and generation upgrade projects" at Merrimack Station; "fashion a rule patterned after Federal Rule of Civil Procedure 26 (c)" regarding treatment of confidential information; and, "grant whatever other relief appropriate in the premises [sic]."

PSNH is reluctant to respond to a reply and be deemed to needlessly continue the cycle of pleadings. However, the necessity for PSNH's instant Objection is based upon two factors: i) the Sierra Club has not just replied to PSNH's initial Objection, but has expanded the relief that it is seeking, thereby making its Reply also a motion for further relief; and, ii) the Sierra Club reply is replete with errors; contains derogatory, unnecessary, and untrue personal attacks and allegations of professional misconduct; reiterates the same bizarre, unfounded and patently absurd allegations contained in its initial Motion; and continues to waste the Commission's time and resources resulting in costs that ultimately must be borne by consumers.

I. INTRODUCTION

The Sierra Club Reply opens with over two pages of single-spaced “facts” that Sierra Club claims are “important to properly respond to the PSNH Objection.” PSNH disputes many of these so-called “facts.”

Sierra Club’s first “fact” is that the Commission opened this proceeding “to review PSNH compliance with RSA 125-O:11-18.” This “fact” is not correct. Sierra Club correctly cites to the August 28, 2008 Secretarial letter that established this docket. However, as noted in PSNH’s Objection of June 1, 2010 (“Objection 1”), the purpose of this proceeding as expressed by the Commission is “to inquire into: the *status* of PSNH’s efforts to install scrubber technology; the *costs* of such technology; and the *effect* installation would have on energy service rates (previously referred to as the default service charge) for PSNH customers.” (Emphases added). This is not a prudence review of the scrubber project - - that proceeding will undoubtedly be noticed at some future date. This proceeding has been, and continues to be, a non-adjudicative, informational docket, created to be “the repository for the materials to be filed by PSNH.” Secretarial Letter, *Id.*

Sierra Club alleges that, in late November, 2008, it “*discovered* that PSNH, in April-May, 2008, replaced the MK2 turbine without any public permitting process.” (Emphasis added). This “fact” implies that the replacement of the HP/IP turbine at MK2 was done secretly and in violation of necessary permitting requirements. Both implications are false. The installation of the HP/IP turbine was undertaken only after consultation with the Air Resources Division of NHDES. The HP/IP turbine module replacement was also the subject of Docket No. DE 08-145 – a docket established pursuant to a petition dated November 12, 2008 based upon PSNH’s report filed on September 2, 2008 in this (08-103) proceeding. Hence, Sierra Club’s late-November “discovery” was already the subject of an on-going docket at this Commission – hardly a remarkable milestone. Further, Sierra Club’s statement that the turbine project was done “without any public permitting process” implies wrongdoing, which is misleading and incorrect. The MK2 HP/IP turbine project was accomplished in accordance with all laws, regulations, and applicable orders. The turbine project has been the subject of actions by this Commission, the NHDES, the Site Evaluation Committee, and the New Hampshire Air Resources Council, and was also discussed by Sierra Club in its *amicus* pleading filed with the New Hampshire Supreme Court in *Appeal of Stonyfield Farm*, 159 N.H. 227 (2009). The turbine project has been deemed to be an

economically and technically separate project, completely independent of the scrubber project. In none of those proceedings was there any finding that PSNH failed to comply with any requirement regarding the installation of the new MK2 turbine. Recall the Commission's analysis of the MK2 turbine replacement contained in Order No. 25,008, dated September 1, 2009, in Docket No. DE 08-145, *slip op.* at 12:

Achieving an increase of 1.87% to 4.06% in Merrimack's energy output by replacing a turbine installed in 1968 with a new, more efficient turbine does not change the form or character of Merrimack Station. Such action, moreover, is generally consistent with the federal standard for fossil fuel generation efficiency adopted in Order No. 24,893. The actions undertaken here by PSNH to change out or replace a turbine — in the same location with a turbine of the same form and type, albeit more efficient — are in the nature of normal operation and maintenance activities and do not rise to the level of a modification of the Merrimack generation assets, which would require prospective Commission approvals. These activities are not material in size or scope, and they do not equate to the construction or acquisition of new capacity.

Sierra Club continues its recitation of the "facts" by attacking the integrity of New Hampshire Air Resources Council member Raymond Donald. Sierra Club attacks Mr. Donald, the Air Resources Council's adjudicatory officer in its Docket No. 09-10 ARC, by stating that he has "demonstrated bias in favor of PSNH" and that "It was obvious that Mr. Donald was not even reading the NHSC filings." The Air Resources Council has ruled on Sierra Club's repeated accusations regarding Mr. Donald.¹ Moreover, such personal attacks on Mr. Donald's integrity, inappropriate as they are, are irrelevant to Docket No. DE 08-103. The Sierra Club has other opportunities under the law to appeal rulings it deems to be erroneous; castigating Mr. Donald's qualifications or integrity before this Commission to support its Motion is not one of them.

Similarly, Sierra Club attacks PSNH. Citing the N.H. Rules of Professional Conduct, Sierra Club indicates that PSNH's attorneys failed to meet the ethical duty of candor towards the tribunal under Rule 3.3 by not revealing Mr. Donald's employment history, which included service at Seabrook Station from 1986 to 1999 and that as a result of such employment, Mr. Donald receives a pension. Such mudslinging is distasteful and untrue. The clear implication of Sierra Club's attack is that PSNH's attorneys knew of Mr. Donald's

¹ "[t]he evidence does not establish that Mr. Donald has a bias or personal pecuniary interest in this matter that is immediate, definite and capable of demonstration. Rather, the alleged conflict of interest is remote, uncertain, contingent, and speculative." ARC Decision and Order at 1-3, February 9, 2010.

employment history and intentionally failed to disclose that knowledge. That implication is false. Counsel for PSNH did not know of Mr. Donald's prior employment over at Seabrook Station (an asset transferred out of PSNH ownership in 1992). Mr. Donald was one of approximately 1000 people employed at Seabrook Station; PSNH had more than 1300 other employees at the time; his employment at Seabrook ended over a decade ago. Mr. Donald's appointment to the Air Resources Council was made to satisfy the requirement of RSA 21-O:11 for a council member "representing the field of municipal government" based upon his employment as a municipal building inspector. PSNH made a timely and complete filing with the Air Resources Council on October 29, 2009, regarding this matter, a copy of which is attached hereto as Attachment 1.

One of Sierra Club's more bizarre "facts" is its allegation that NUSCO employee Robert A. Baumann – Director, Revenue Regulation & Load Resources for Northeast Utilities Service Company and a frequent witness on behalf of PSNH at the Commission – threatened the Sierra Club and its state chapter director in this Commission's hearing room during a hearing in Docket No. DE 09-091. Such a personal attack on Mr. Baumann is more mudslinging by Sierra Club that is just plain false, and totally irrelevant to the subject matter of this docket. Sierra Club fails to note that Mr. Baumann debunked this libelous assertion in an affidavit filed with the Air Resources Council on January 4, 2010. A copy of that ARC filing is attached hereto as Attachment 2. Indeed, when describing the circumstances of Mr. Baumann's alleged "threat" to the Air Resources Council, Sierra Club's attorney claimed, "He [Attorney Cunningham] was ordered from the hearing room by Suzanne G. Amidon, PUC staff attorney, *at the behest of PSNH.*" New Hampshire Sierra Club Objection to Motion to Dismiss New Hampshire Sierra Club for Lack of Standing, ARC Docket Nos. 09-10 and 09-11, December 28, 2009, at fn. 2 (emphasis added). Staff Attorney Amidon wrote a letter to the Air Resources Council on January 14, 2010 "to correct Arthur Cunningham's inaccurate characterization" of that event, attached hereto as Attachment 3.

Sierra Club alleges as a "fact" that the Title V Operating Permit issued by NHDES for Merrimack Station is devoid of facts demonstrating that PSNH has complied with Clean Air Act. Even if this "fact" was true, which it is not, it is totally irrelevant to the instant proceeding. However, for the record and to correct Sierra Club's misstatement, please note that in the Title V Operating Permit Findings of Fact, NHDES stated: "DES conducted a comprehensive review of ...the compliance history of the facility....Based on its review and considerations, DES determined that PSNH Merrimack meets all state and federal air

regulations including the National Ambient Air Quality Standards for criteria pollutants and the New Hampshire Ambient Air Limits for all regulated toxic air pollutants.” Title V Operating Permit, March 15, 2010.

II. SUBSTANTIVE ARGUMENTS OF SIERRA CLUB

1. Relevance of the Burns & McDonnell, GZA, and Sargent & Lundy Reports.

Sierra Club claims that its recitation of these “facts” is “important to properly respond to the PSNH Objection to the May 24, 2010, NHSC Motion.” Sierra Club begins its “Memorandum” by implying more violations of Professional Conduct Rules by counsel for PSNH -- this time Rule 3.1, castigating PSNH’s characterization of the Sierra Club’s Motion as “frivolous.” Sierra Club adds to its litany of personal attacks by accusing PSNH of “improper conduct...in the NHDES-ARC litigation” and characterizing PSNH’s Objection 1 as “a hypocritical ploy, clearly calculated to chill any challenge to PSNH influence,” a poorly veiled reference to its prior allegation that Commission Staff acts “at the behest of PSNH.”

Sierra Club argues that its Motion regarding the reports should be granted because PSNH has not obtained all the regulatory approvals for the scrubber project. Sierra Club states, “PSNH replaced the MK2 turbine without any permitting process; the reports suggest other plant projects that demand investigation.” The Sierra Club’s allegation that PSNH has failed to obtain regulatory approval and necessary environmental or other permits for the non-existent covert plant capacity upgrades and life extension projects has no basis in fact. Even if it did, such circumstances would not be relevant to the purpose of Docket No. DE 08-103, nor jurisdictional to the Commission’s regulation of PSNH. If such matters existed (and they do not), they would be within the authority of the NHDES, the Site Evaluation Committee, or other similar permitting agency. Hence, Sierra Club’s Motion is not supported by this argument.

2. Standing.

Sierra Club claims that PSNH is collaterally estopped from challenging Sierra Club’s standing in this proceeding. Sierra Club argues that “the doctrine of collateral estoppel serves the dual purpose of ‘promoting judicial economy and preventing inconsistent judgments’” (citation omitted). Notions of judicial economy are noble, but belied by Sierra Club’s unending filings in multiple proceedings in its attempt to block PSNH’s compliance with the scrubber law; this has included not just matters before this Commission, but also

dockets before the New Hampshire Supreme Court, the Air Resources Council, and the Site Evaluation Committee. Nonetheless, as noted by Sierra Club, the doctrine of collateral estoppel applies only when the issues in the dockets are identical. Sierra Club claims that the issues in this proceeding -- “the enforcement of RSA 125-O:13, IV, regarding plant projects that may increase plant generating capacity that exceed significant emission levels under the Clean Air Act”-- are identical to the issues pending in Docket No. 09-10 ARC before the Air Resources Council. As noted earlier, Sierra Club misunderstands and thus misstates the purpose of this docket that was set forth by the Commission in the August 28, 2008 Secretarial letter. Once again, the purpose of this proceeding as stated by the Commission is “to inquire into: the status of PSNH’s efforts to install scrubber technology; the costs of such technology; and the effect installation would have on energy service rates (previously referred to as the default service charge) for PSNH customers.” The issues before the Air Resources Council as set forth in an Order issued by that Council on February 22, 2010, are:

- A. Whether the MK2 turbine modifications should have been included with and/or aggregated to the scrubber permit application.
- B. Whether DES made the proper "completeness" determination regarding the scrubber permit application before issuing the permit in question.
- C. Whether DES considered the proper baseline years in issuing the permit in question.

The issues before the Air Resources Council and those before the Commission in this docket are only peripherally related; certainly, the issues before this Commission in this docket do not include “the enforcement of RSA 125-O:13,IV, regarding plant projects that may increase plant generating capacity that exceed significant emission levels under the Clean Air Act” as Sierra Club claims. Hence, the doctrine of collateral estoppel is inapplicable.

3. This Docket is Not an Adjudicative Docket.

Sierra Club acknowledges that this proceeding is not an adjudicative docket. It then goes on to claim, “What is quite astonishing is the unbounded PSNH arrogance that only PSNH is entitled to offer information relevant to this docket.” Pursuant to statutory authority contained in RSA 365:5 and 365:19, PSNH was directed by the Commission to provide certain information. PSNH has complied fully with the Commission’s directives. It was the Commission, not PSNH, which characterized this docket “as the repository for the materials to be filed by PSNH.”

Sierra Club continues by repeating its unsupported and illogical contention that “The reports offered by NHSC *prove* that PSNH engaged in comprehensive life extension and generation upgrade projects of the very type contemplated by the legislature in RSA 125-O:13, IV, and as described in the Smagula correspondence of June 7, 2006, and January 31, 2008, to NHDES-ARD.” (Emphasis added). As noted in PSNH’s Objection 1, all that the reports prove is that PSNH has taken steps to ensure that it prudently owns, operates and maintains its generating assets. If and when PSNH undertakes any projects at its generating facilities, PSNH has, and will continue to, obtain all necessary permits and approvals, and report such projects to this Commission as required. Sierra Club’s concern whether PSNH will “timely comply with RSA 125-O:13, IV regarding its federal and state regulatory responsibilities” will not be remedied by granting its Motion concerning reports prepared during the 2004 to 2007 time period.

III. CONCLUSION

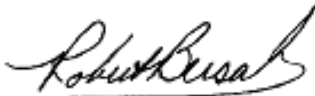
For the reasons set forth herein and in PSNH’s Objection 1, Sierra Club’s “respectful demand” regarding the reports should be denied.

Sierra Club’s further demand that the Commission “examine full PSNH compliance with RSA 125-O: 11-18, particularly RSA 125-O:13, IV *as it relates to the projects suggested by the reports*” (emphasis added) is substantively deficient—the scrubber project, the focal point of this docket, is mandated by law and is an ongoing construction project while, in contrast, “the projects suggested by the reports” are irrelevant to this docket since the reports prepared by various consultants (as explained in PSNH’s initial objection) merely provide broad overviews of alternative operating scenarios, of options, for Merrimack Station. There is no nexus between the reports and the scrubber project. The Sierra Club’s request is thus irrelevant to this docket.

And, finally, the Sierra Club’s demand that the Commission “fashion a rule patterned after Federal Rule of Civil Procedure 26 (c)” must be denied as it is both unnecessary and procedurally infirm. The Commission’s existing regulations at Rule Puc 203.08 adequately deal with this issue consistent with New Hampshire statutory and case law. Moreover, this demand of Sierra Club fails to comply with PART Puc 205 of the Commission’s regulations concerning Rulemaking.

Respectfully submitted this 14th day of June, 2010.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

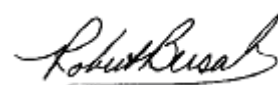
By: _____

Robert A. Bersak
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CERTIFICATE OF SERVICE

I certify that on this date I caused this Objection to be served to parties on the Commission's service list for this docket.

June 14, 2010

_____

ATTACHMENT 1

PSNH FILING IN
NEW HAMPSHIRE AIR RESOURCES COUNCIL
DOCKET 09-10
OCTOBER 29, 2009



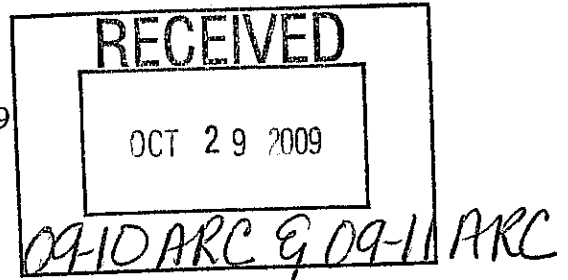
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October 29, 2009



Air Resources Council
Attn: Amy Samson, Appeals Clerk
c/o DES Legal Unit
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

Re: New Hampshire Sierra Club and Conservation Law Foundation's Appeal of
Temporary Air Permit TP-0008, Docket Nos. 09-10 and 09-11

Dear Ms. Samson:

I enclose for filing in the above-referenced matter an original and 6 copies the Response of Public Service Company of New Hampshire Concerning New Hampshire Sierra Club's Renewed Motion for Disqualification and Motion to Defer Rulings.

If you have any questions, please contact me.

Sincerely,

COPY

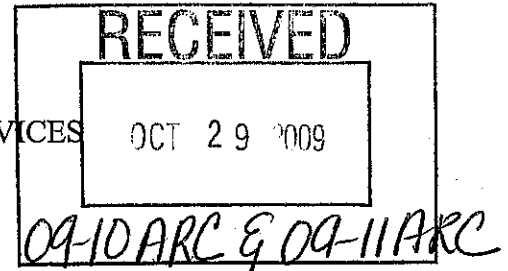
Barry Needleman

BN:cb
Enclosure

cc: Service List

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
AIR RESOURCES COUNCIL

Docket Nos. 09-10 and 09-11



IN RE: Public Service Company of New Hampshire Flue Gas
Desulphurization System Temporary Permit No.: TP-0008

**RESPONSE OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
CONCERNING NEW HAMPSHIRE SIERRA CLUB'S RENEWED MOTION FOR
DISQUALIFICATION AND MOTION TO DEFER RULINGS**

1. On March 18, 2009, New Hampshire Sierra Club ("NHSC") filed a Motion for Disqualification of certain members of the Air Resources Council (the "Council"). NHSC also requested that all other members of the Council adequately disclose all potential conflicts of interest.
2. On April 1, 2009, Public Service Company of New Hampshire ("PSNH") joined in and supported NHSC's Motion. *See* Concurrence with New Hampshire Sierra Club's Motion for Disqualification. PSNH also submitted a proposed "Voir Dire Questionnaire for Air Resource Council Members" suggesting various questions that could be used to ensure there were no potential conflicts. *See* Exhibit 1. It has been PSNH's position from the beginning of this proceeding that all Council members sitting on this matter must be neutral and impartial.
3. On June 8, 2009, the Council ruled that NHSC's motion for disqualification was moot because the specified individuals had already recused themselves. *See* Council Order at 2 (dated June 19, 2009). The Council also ruled that the request to disclose conflicts had become moot since all Council members had disclosed known conflicts. *Id.*
4. On September 18, 2009, NHSC submitted a Motion for Disqualification pertaining to the Presiding Officer in this matter, Raymond Donald, based upon his decision in a discovery dispute that was adverse to NHSC's requested action. PSNH objected to the basis for

NHSC's Motion (an adverse decision) on September 22, 2009, as did the Department of Environmental Services.

5. On October 19, 2009, NHSC supplemented and renewed its Motion for Disqualification. On October 21, 2009, PSNH Objected to NHSC's supplement and renewal, stating that PSNH's ownership interest in Seabrook Station was transferred in 1992 and Northeast Utilities' ownership interest in Seabrook was sold in 2002.

6. On October 26, 2009, NHSC filed a reply to PSNH's objection together with a renewal of its Motion for Disqualification and a Motion to Defer Rulings until this issue is resolved. Although NHSC raised no new facts in this pleading, PSNH decided to conduct its own internal inquiry to ensure that the record concerning this issue is accurate and complete.

7. On October 27, 2009, PSNH determined that Mr. Donald had been employed at Seabrook Station beginning in 1986.¹ At that time, the managing agent for the joint owners in the construction and operation of the Seabrook plant was New Hampshire Yankee Division (NHY), a division of PSNH, whose management reported dually to PSNH and to the Joint Owners. *See, Re Northeast Utilities/Public Service Company of New Hampshire*, 75 NH PUC 396, 401 (1990). Mr. Donald continued working at Seabrook Station following transfer of the operational responsibilities for Seabrook to North Atlantic Energy Service Corporation in 1992.² Mr. Donald continued his employment at Seabrook Station until 1999 when he retired. In total, Mr. Donald's employment at Seabrook Station covered a span of thirteen years. Mr. Donald receives retirement benefits from an ERISA-governed Employee Pension Benefit Plan funded by

¹ The joint owners of Seabrook Station at that time included PSNH, United Illuminating Co., EUA Service Co., Massachusetts Municipal Wholesale Electric Co., New England Power Co., The Connecticut Light and Power Co., New Hampshire Electric Cooperative, Inc., and five other minor owners.

² At that same time, PSNH's ownership interest in Seabrook Station was transferred to North Atlantic Energy Corporation pursuant to PSNH's bankruptcy reorganization plan. Both North Atlantic Energy Service Corporation and North Atlantic Energy Corporation were subsidiaries of Northeast Utilities.

the joint-owners of Seabrook Station and administered by an independent third party. Mr. Donald's benefits are not affected by the financial performance of either PSNH or Northeast Utilities.

8. During the period from 1986-1999, approximately 1000 people were employed at Seabrook Station. This figure does not include contractor personnel. This is in addition to the more than 1300 PSNH employees located throughout the state of New Hampshire.

9. In sum, as explained in an earlier pleading, PSNH has had no ownership interest in Seabrook Station since June 5, 1992 (over 17 years ago). Northeast Utilities has had no ownership interest in Seabrook Station since November 1, 2002 (7 years ago). PSNH filed for its temporary air permit regarding the Scrubber in June, 2007 (15 years after it ended any ownership of Seabrook, and 5 years after Northeast Utilities divested ownership in Seabrook).

10. Upon becoming aware of the facts related herein, PSNH contacted counsel for the Air Resources Council, Senior Assistant Attorney General Anthony Blenkinsop, to communicate this information.

11. PSNH is making this filing with the Council expeditiously to ensure that all parties are also informed. However, nothing disclosed herein provides a legally sufficient ground for disqualification from a judicial or quasi-judicial position.³

³ "The majority rule, however, is that 'judges are not disqualified solely on the basis that they were formerly employed by the prosecutor's office.' *People v. Julien*, 47 P.3d 1194, 1197-98 (Colo.2002)." *State v. Whittey*, 149, N.H. 463, 466-7 (2003). In *Whittey*, "The trial judge did not begin working for the attorney general's office until 1985, approximately four years after Fine was murdered, and left that employment more than a decade before the defendant was indicted and prosecuted. There is nothing in the record to indicate that she had any direct involvement in the defendant's case by participating in the investigation or preparation of the case, or that she acquired any personal knowledge about the evidence in the case." *Id.* In the instant proceeding, Mr. Donald's employment at Seabrook Station began 23 years ago; it ended 10 years ago, a decade before this appeal was filed with the Council.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON
PROFESSIONAL ASSOCIATION

Date: October 29, 2009

By: _____

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Certificate of Service

I hereby certify that the foregoing has been sent via first class mail this date with first class postage prepaid, to the service list in this matter, and to Amy Sampson, Appeals Clerk Air Resources Council, New Hampshire Department of Environmental Services.

COPY
Barry Needelman

ATTACHMENT 1**STATE OF NEW HAMPSHIRE
AIR RESOURCES COUNCIL**

Docket No. 09-10 ARC

Appeal of NH Sierra Club & a.

**VOIR DIRE QUESTIONNAIRE
FOR AIR RESOURCES COUNCIL MEMBERS**

RSA 21-O:11 establishes the Air Resources Council. It calls for the Council to be composed of 11 members. When deciding appeals, the Council members are fulfilling a quasi-judicial role. Hence, the Council members must be impartial. This statute expressly requires that, "The council members who shall represent the public interest may not derive any significant portion of their income from persons subject to permits or enforcement orders, and may not serve as attorney for, act as consultant for, serve as officer or director of, or hold any other official or contractual relationship with any person subject to permits or enforcement orders. All potential conflicts of interest shall be adequately disclosed."

Due process demands impartiality on the part of those who function in judicial or quasi-judicial capacities. The New Hampshire Supreme Court has held that whether or not one subjectively has kept an open and neutral mind is not the test. Rather, whether facts exist for a reasonable person to question his impartiality is the standard by which a disqualification is to be judged. The court further stated that in recognizing the need for neutrality and impartiality and thus mandating disqualification where impartiality can reasonably be

questioned, the Legislature sought to avoid partiality concerning issues of fact involved in pending matters.

In view of these high ethical requirements, the members of the Council are requested to complete the following questionnaire to determine whether facts exist for a reasonable person to question a member's impartiality.

Please answer all questions truthfully. Responding in the affirmative does not necessarily mean that a member must be recused from participating in this matter. Such response will allow counsel for the Council, and for the parties, to determine whether further inquiry is necessary to ensure that potential conflicts of interest are adequately disclosed and that the voting members are neutral and impartial.

For purposes of the first three questions, please refer to the following listing of organizations:

- 1 Sky
- Appalachian Mountain Club
- Campaign for Ratepayers Rights
- Citizens for a Future NH
- Clean Water Action.
- Commercial Ratepayers Group
- Conservation Law Foundation
- Environment NH
- Freedom Logistics, LLC
- Granite Ridge Energy, LLC
- Granite State Conservation Voters
- Granite State Disability Coalition
- Great American Dining, Inc. (Common Man Restaurants)
- H & L Instruments, LLC
- Halifax-American Energy Co., LLC
- National Wildlife Federation
- New England Power Generators Assoc.
- New Hampshire Sierra Club
- New Hampshire Wind Energy Association
- New Hampshire Clean Power Coalition
- New Hampshire Medical Society
- New Hampshire Public Interest Research Group

New Hampshire Rivers Council
New Hampshire Unitarian Universalist Social Responsibility Dept.
NH Green
Northeast Utilities Service Co.
Office of Consumer Advocate
Public Service Co. of New Hampshire
Resident's Environmental Action Committee for Health
Stonyfield Farm, Inc.
The Nature Conservancy
TransCanada Hydro Northeast, Inc.
Union of Concerned Scientists
Worldview, Ltd

1. Are you, or any member of your immediate family, employed by or receive payment from any of the organizations listed above? YES NO
2. Do you, or any member of your immediate family own stock in, or have any other ownership interest in, any of the organizations listed above? YES NO
3. Are you, or is any member of your immediate family, a member, serve on the Board of, or volunteer for of any of the organizations listed above? YES NO
4. Have you advocated for or against the installation of "scrubber technology" at PSNH's Merrimack Station? YES NO
5. Have you participated directly or indirectly in the proceeding before the New Hampshire Department of Environmental Services, Air Resources Division's permitting process leading to the issuance of a Temporary Air Permit for a Flue Gas Desulfurization System ("scrubber technology") at PSNH's Merrimack Station located in Bow, New Hampshire? YES NO
6. Are you aware of any facts which may cause a reasonable person to question your impartiality to hear this matter? YES NO
7. Are you aware of any potential conflicts of interest that you feel must be disclosed? YES NO
8. Are you aware of any reason why you may be unable to arrive at a fair and reasoned decision on this matter? YES NO

ATTACHMENT 2

PSNH FILING IN
NEW HAMPSHIRE AIR RESOURCES COUNCIL
DOCKET 09-10
JANUARY 4, 2010

McLane

McLane, Graf,
Raulerson & Middleton
Professional Association

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January 4, 2010

Air Resources Council
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Concord, NH 03302-0095

Re: New Hampshire Sierra Club and Conservation Law Foundation's Appeal of
Temporary Air Permit TP-0008, Docket Nos. 09-10 and 09-11

Dear Ms. Samson:

I enclose for filing in the above-referenced matter an original and 6 copies of Public Service Company of New Hampshire's Reply to New Hampshire Sierra Club's Objection to Public Service Company of New Hampshire's Motion to Dismiss New Hampshire Sierra Club for Lack of Standing.

If you have any questions, please contact me.

Sincerely,


Barry Needleman

BN:cb
Enclosure

cc: Service List

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
AIR RESOURCES COUNCIL

Docket Nos. 09-10 and 09-11

IN RE: Public Service Company of New Hampshire Flue Gas
Desulphurization System Temporary Permit No.: TP-0008

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S REPLY TO
NEW HAMPSHIRE SIERRA CLUB'S OBJECTION TO PUBLIC SERVICE COMPANY
OF NEW HAMPSHIRE'S MOTION TO DISMISS NEW HAMPSHIRE SIERRA CLUB
FOR LACK OF STANDING**

On December 22, 2009, Public Service Company of New Hampshire's ("PSNH") filed a Motion to Dismiss New Hampshire Sierra Club ("NHSC") for lack of standing. NHSC filed an Objection on December 28, 2009. PSNH files this Response and states as follows.

1. The NHSC Objection completely side-stepped the only relevant issue here: whether the NHSC accurately represented its status to the Council by stating in its Notice of Appeal that "Appellant, New Hampshire Sierra Club, is a member-supported, non-profit corporation...." NHSC Notice of Appeal at 2. PSNH, in its Motion to Dismiss, asserted that NHSC did not accurately represent its organizational status in order to satisfy standing requirements. Simply stated, there is no non-profit corporation known as "New Hampshire Sierra Club."
2. Rather than address this fatal error, NHSC ignored it and simply stated that it is a Chapter of the national Sierra Club. PSNH does not contest that fact. Nor would PSNH contest that the national Sierra Club is a duly constituted legal organization that may claim standing here. That is not what has happened. An entity which does not exist under New Hampshire law, or any law – the "New Hampshire Sierra Club" – has claimed it is a "member supported, non-profit corporation" and then based on that assertion, claimed standing in its own right. But it is

axiomatic that an organization which does not exist cannot have organizational standing. NHSC has pointed to no law demonstrating that a chapter of a foreign, non-profit corporation can have standing in its own right. If the Appellant here wishes to correct the record and represent that it is pursuing this matter on behalf of the national Sierra Club, it should do so. But as it stands now, given these deficiencies, and NHSC's ongoing failure to explain how it could claim standing as a non-profit corporation that does not actually exist, PSNH maintains NHSC does not have standing here.

3. In its Objection, NHSC asserts that Env-Ac 205.16 bars PSNH's challenge to standing. NHSC Objection at 1. NHSC is wrong. Standing is an issue of subject matter jurisdiction that can be raised by a party at any time. *Libertarian Party of New Hampshire v. Secretary of State*, 158 N.H. 194, 195 (2008); *see also Hughes v. N.H. Div. of Aeronautics*, 152 N.H. 30, 35 (2005). Nothing in the Council rules precludes PSNH from challenging NHSC's standing at this time, especially given the fact that PSNH only recently learned that NHSC is, in fact, not a duly constituted New Hampshire non-profit corporation.

4. Finally, PSNH has worked diligently throughout this proceeding to focus its pleadings on the relevant issues before the Council. It will continue to do so but, in this case, it cannot ignore a series of aspersions contained in the NHSC response.

5. NHSC refers to a recent New Hampshire Public Utilities Commission proceeding and asserts that a conversation that a Northeast Utilities employee, Robert Baumann, had with Catherine Corkery of NHSC "was an implied threat and the predicate for the PSNH Motion to Dismiss." NHSC Objection at 2. It was nothing of the kind. PSNH has attached Mr. Bauman's Affidavit, recounting the details of that conversation, documenting clearly that it was an innocuous exchange.

6. NHSC next claims its attorney was ordered to leave a PUC proceeding “at the behest of PSNH.” NHSC Objection at footnote 2. That claim is false. The proceeding in question was a PUC Technical Session. Those sessions are normally only attended by parties to the proceeding. Sierra Club was not a party. Therefore, the PUC, not PSNH, requested that Sierra Club leave the room before the technical session commenced.

7. NHSC next asserts that PSNH “obstructed access to documents regarding the MK2 project.” NHSC Objection at 4. PSNH did no such thing. Rather, PSNH filed appropriate, lawful objections to NHSC’s improper, irrelevant discovery requests. The Council upheld PSNH’s objections.

8. NHSC’s also claims that PSNH “concealed the PSNH employment history of the Presiding Office of the Air Resources Council.” NHSC Objection at 4. In fact, on its own volition, and not based on any facts or allegations raised by NHSC or based on any legal obligation, PSNH conducted an internal review to determine whether the Presiding Officer had any connection with the company. Immediately upon learning that the Presiding Officer was formerly employed at the Seabrook Station (where PSNH was a part owner) from approximately 1986 through 1999, PSNH notified Counsel for the Council and all parties involved in this proceeding. The suggestion that PSNH “concealed” anything pertaining to this issue is false.

9. Zealous advocacy is appropriate in any legal forum. There is, however, a line between such advocacy and the type of inappropriate hyperbole that has become commonplace in this proceeding. Accusations of concealment, obstruction and supposed threats are very serious, and go well beyond zealous advocacy, especially when such accusations are so detached from the actual reality of the situation. PSNH regrets that it has become necessary to respond to these assertions and occupy the Council’s time with such irrelevant issues.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON
PROFESSIONAL ASSOCIATION

Date: January 4, 2010

By: 

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Certificate of Service

I hereby certify that the foregoing has been sent via first class mail this date with first class postage prepaid, to the service list in this matter, and to Amy Sampson, Appeals Clerk Air Resources Council, New Hampshire Department of Environmental Services.


Barry Needleman

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
AIR RESOURCES COUNCIL

Docket Nos. 09-10 and 09-11

IN RE: Public Service of New Hampshire Flue Gas
Desulphurization System Temporary Permit No: TP-0008

AFFIDAVIT OF ROBERT A. BAUMANN
DIRECTOR-REVENUE REGULATION & LOAD RESOURCES,
NORTHEAST UTILITIES

On November 23, 2009 I attended the NHPUC hearing in Docket No. 09-091 on behalf of PSNH. My role was as a sworn witness representing PSNH. At the beginning of the hearing I presented the case for PSNH as the lead financial witness. I also answered any questions related to my area of expertise which centers around the 2008 financial results related to the revenues and expenses incurred by PSNH in connection with the Default Energy Service rate. Mr. Smagula from PSNH was also part of the panel of witnesses. As an engineer, he addressed the specific issues related to the generation sources of PSNH, specifically the operations of Merrimack station. At no time did I participate in the engineering portion of our hearing as I am not and was never knowledgeable in the operations of any of PSNH's generating plants. My background is financial in nature (BA in Economics, MBA and Certified Public Accountant in Connecticut with over 28 years of regulatory utility experience). At the time of the hearing I had not been involved in any issues related to the Sierra Club or the Air Resources Council. In fact, at the time I did not know what the Sierra Club was or the Air Resources Council. At the writing of this affidavit I still do not know what the Air Resources Council is or what their function is. After my testimony for PSNH, I was routinely excused from the witness box by the Commission and took my seat towards the back of the hearing room. I remained there until the hearing was concluded. After standing while the Commissioners left the hearing room, after the hearing was closed, I began to pack my bag with my support books. At that point I turned to a woman who I had been told was with the Sierra Club and began what I would consider a polite and professional conversation. I did not introduce myself as I had just gotten off the witness stand and felt awkward introducing myself after my name was used dozens of times during the hearing at which this woman had attended. I inquired as to the Charter of the Sierra Club, of which I knew nothing of. I also asked if they were a government organization or private organization and added for clarification, how they were funded. I received a polite response as to their charter and was told they were a private organization with no government funding. I thanked the woman and walked away. As Director of Revenue Regulation and Load Resources and as the lead financial witness in many different hearings, I strive to meet as many people as I can from

all parties, regardless of their position in any particular case. My conversation with the woman from the Sierra Club was just that, a polite and professional conversation so that I could meet someone new and learn more about their organization.

By: **COPY**
Robert A. Baumann

Date: 1/4/2010

STATE OF CONNECTICUT
COUNTY OF Hartford

On this 4th day of January, 2010, personally appeared before me the above-named, Robert A. Baumann and swore that the foregoing statements are true to the best of his knowledge and belief.

COPY
Notary Public/Justice of the Peace

SANDRA S. NESCI
NOTARY PUBLIC
STATE OF CONNECTICUT
MY COMMISSION EXPIRES 07/31/2014

ATTACHMENT 3

STAFF ATTORNEY AMIDON'S LETTER TO
NEW HAMPSHIRE AIR RESOURCES COUNCIL

DOCKET 09-10

JANUARY 14, 2010

THE STATE OF NEW HAMPSHIRE



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TDD Access: Relay NH
1-800-735-2964

Website:
www.puc.nh.gov

January 14, 2010

Air Resources Council
Department of Environmental Services
State of New Hampshire
P. O. Box 95
Concord, NH 03302-0095

Re: Docket No. 09-10-ARC; 09-11-ARC

Dear Council Members:

On December 29, 2009, I received a copy of N.H. Sierra Club's objection to PSNH's motion to dismiss the Sierra Club from the proceeding for lack of standing (Objection).

I am a staff attorney for the Public Utilities Commission (Commission). I am writing this letter to correct Arthur Cunningham's inaccurate characterization of a meeting that took place here on November 16, 2009. *See* Objection, footnote 2 (page 3).

Every year on May 1, Public Service Company of New Hampshire (PSNH) makes a filing with the Commission for the reconciliation of the prior year's energy service costs and stranded cost recovery charges. The docket number for the reconciliation of the 2008 calendar year is DE 09-091. At the beginning of the docket, the Commission considers motions to intervene and establishes a procedural schedule for the proceeding. The Sierra Club and Mr. Cunningham did not file motions to intervene and were not made parties to the docket.

At the PUC, any person, whether or not they are a party, may attend a technical session. Technical sessions are generally held to assist parties in understanding testimony and other evidence in a pending docket. Technical sessions may also involve settlement discussions. Settlement discussions are confidential pursuant to Commission rule N.H. Code of Admin. R. Puc 203.20(a). In the event a settlement is discussed at a technical session, only parties to the docket may participate.

Because I anticipated that settlement might be discussed at the technical session, I consulted with Commission General Counsel, F. Anne Ross, regarding the possibility that a Sierra Club representative might attend the technical session. We agreed that I should

make it clear that such non-party representatives could attend the technical session, but would have to leave the room before we began discussing a settlement.

Mr. Cunningham and another person who said she was associated with Sierra Club, Karen Irwin, attended the November 16, 2009 for the technical session. As the public and Staff decided to begin settlement discussions, Mr. Cunningham and Ms. Irwin would need to leave so that the parties could discuss a settlement. Mr. Cunningham said: "I strenuously object" but he left the room.

The parties did reach a settlement which was heard by the Commission on November 23, 2009. Mr. Cunningham attended the hearing and was allowed to make a closing statement although he had not intervened in the docket.

Mr. Cunningham's statement at footnote 2 that "he was ordered from the hearing room by Suzanne G. Amidon, staff attorney, at the behest of PSNH" is misleading. Instead, Mr. Cunningham was asked to leave, consistent with Commission rules and practice in order to protect the confidential nature of settlement discussions. Perhaps, Mr. Cunningham was not aware of Puc 203.20 and Commission practice, but his exclusion from settlement discussions was consistent with both. I trust this clarifies any misunderstanding which may have resulted.

Sincerely,

A handwritten signature in blue ink, appearing to read "Suzanne G. Amidon", with a large, stylized loop at the end.

Suzanne G. Amidon
Staff Attorney

cc. F. Anne Ross, General Counsel
Docket No. DE 09-091