

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DE 10-121

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE  
RECONCILIATION OF ENERGY SERVICE AND STRANDED COSTS FOR  
CALENDAR YEAR 2009

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 Ried, 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, 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.

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<sub>x</sub> 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.<sup>1</sup>

Both cases are pending before the Air Resources Council.

NHSC, because of the lack of an environmental permitting process for the MK2 turbine replacement and the sweeping PSNH confidentiality claims in Air Resources Council docket 09-10 ARC, has scoured any related regulatory docket for facts that relate to the project, including dockets before the New Hampshire Public utilities Commission.

In Public Utilities Commission Docket DE 09-091, PSNH demanded reimbursement by the ratepayers of \$13,200,000 purchased power costs for extended generation outages caused foreign material damage to the replaced turbine.

Based upon the DE 09-091 Stipulation and Settlement Agreement, PSNH was authorized to recover the \$13,200,000. The Settlement Agreement provided that there would be an opportunity, during the 2009 reconciliation process, to review PSNH efforts to recover outage costs from third parties.

The current reconciliation docket, DE10-121, does not contain information regarding the investigation and recovery of outage costs caused by the foreign material damage as provided for in the Settlement Agreement. The docket does, based upon the testimony of Robert A. Baumann, seek recovery of SCRC “net under-recovery in 2009” of \$3.9 million due to “higher above-market IPP costs”. William H. Smagula testified regarding MK2 outages, including “Planned Maintenance” from August 1, 2009, until December 6, 2009. This extended outage involved substantial work on the replaced turbine.<sup>2</sup> There is no Outage Report specifically detailing the work done.

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. The replacement of the MK2 turbine, together with the generation upgrade resulting from the turbine replacement and balance of plant projects<sup>3</sup>, including the work done during the extensive outages in 2008 and 2009, have substantial Clean Air Act and Multiple Pollution Reduction Programs implications. The costs PSNH proposes to pass on to ratepayers by virtue of this docket, and the 2008 reconciliation docket provided for in the DE 09-091

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<sup>1</sup> Merrimack Station is the largest single contributor to regional haze in New Hampshire.

<sup>2</sup> Mr. Smagula testified that the new HP/IP turbine increased generating capacity 12 MW normal net out-put from 320 MW to 332 with “claim” capacity increase from 321.75 MW to 337.2 MW.

<sup>3</sup> From the January 31, 2008, letter from William H. Smagula, to NHDES-Air Resources Division seeking “expedited review” of the turbine replacement.

Settlement Agreement, may not include costs for projects not fully compliant with environmental law.

NHSC intervention will not impair the interests of justice and the prompt conduct of the proceedings will not be impaired. On the contrary, justice will be served by the conduct of a full, open and transparent examination of the facts surrounding the turbine replacement and the balance of plant projects.

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

9/23/10

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.

9/23/10



Arthur B. Cunningham