

News > State

# Merrimack Station valuation case to go before Supreme Court



The Merrimack Station power plant in Bow is seen at dusk on Thursday, Oct. 12, 2017. (ELIZABETH FRANTZ / Monitor staff)

Elizabeth Frantz » [Buy this Image](#)



The Merrimack Station in Bow spews out steam on Friday, December 16, 2016. GEOFF FORESTER



FILE - In this Jan. 20, 2015 file photo, a plume of steam billows from the coal-fired Merrimack Station in Bow, N.H. Earth is likely to hit more dangerous levels of warming even sooner if the U.S. pulls back from its pledge to cut carbon dioxide pollution because America contributes so much to rising temperatures, scientists said. (AP Photo/Jim Cole, File) Jim Cole

- [Previous](#)
- [Next](#)







- 
- [Previous](#)
- [Next](#)

By [CAITLIN ANDREWS](#)

Monitor staff

Thursday, October 12, 2017

- 
- 0
- [Print](#)
- 

- [BOW NH](#)

#### RELATED STORIES

- [Eversource chooses buyers for N.H. power plants, including Bow's Merrimack Station](#)

A year and a half after the town of Bow first went to court to defend its valuations of Merrimack Station, the fate of the case and potentially millions of Bow tax dollars is now in the hands of the state's Supreme Court.

The town is appealing a ruling from Superior Court Judge Richard McNamara from October 2016 that set the value of all Eversource property related to the plant at about \$66.6 million in 2012 and \$67.4 million in 2013. The town valued the plant at \$159 million when it sent the company a tax bill.

It's a case Bow residents have long known to have costly implications: If the trial court ruling is upheld, the town could be faced with a minimum estimated refund of \$8.5 million.

The case came to a head Thursday morning, with Bow arguing Eversource used improper methods to evaluate the worth of the station itself, the combustion turbines, and transmission and distribution network.

The thrust of Bow attorney Paul Fitzgerald's argument rested on the method of valuation used by Eversource's expert, Concentric Energy Advisor John Kelly. Fitzgerald said valuing the plant's property at its net book value rather than its fair market value.

This, in turn, led to Fitzgerald questioning Kelly's credibility: He argued McNamara made his decision with information that has been "disregarded by this court," – and if the Court upheld the lower court's ruling, the case would serve as a "watershed moment in terms of tax abatement cases of utilities in the state of New Hampshire."

Associate Justice Robert Lynn wasn't so sure.

"We have never said that," he said of the soundness of using utilities' net worth value. "We have never said you can't use it. It's always been a factual matter. ... We've always said that in the trial court, if they didn't end up selecting that methodology, we said they didn't have to. We've never said there would be something wrong with them doing it."

A major point Fitzgerald and Eversource's counsel, Margaret Nelson, differed on was the value of the plant's two combustion turbines. Fitzgerald argued the turbines, essentially generators used during peak periods and emergencies, are valuable because they generate additional revenue while running, despite Eversource's characterization of the engine as "decrepit" and of zero value. He argued the turbines should be valued separately from the plant itself.

Nelson conceded the turbines had been used twice as much in 2013-14 than usual – Eversource ran the turbines for 87 hours that year, as opposed to its normal rate of 30-40 hours – and that the

turbines' use does create a revenue stream. But that doesn't mean the turbines' value should be judged separately from the plant, she said.

"Nothing in that data changed the value of them," she said. "They have no independent value."

Another sticking point was why Eversource would choose to invest \$422 million in a mercurial scrubber. Bow has long contended that Eversource made the choice to invest in the scrubber because it saw the plant as valuable.

Chief Justice Linda Dalianis said the costly piece of equipment must have added to the plant's overall value, but Nelson said no. "What changed (after Eversource purchased the scrubber) was a seismic shift in the market between the time when the company decided to comply with a federal environmental mandate rather than close the plant," she said.

What changed, Nelson said, was the rise of fracking technology, leading to more readily available natural gas. "That decision to invest in the scrubber has to be put in context of the time that it was made," she said.

"A decision they regret," said Associate Justice James Bassett.

"One that was reasonable at the time," Nelson countered. "The scrubber had to be installed, otherwise the plant would be closed."

On Wednesday, Eversource announced the sale of Merrimack Station to out-of-state buyers to the tune of \$75 million. The sale must be approved by the New Hampshire Public Utilities Commission.