

LAW OFFICES
ARTHUR B. CUNNINGHAM
79 Checkerberry Lane, Hopkinton, NH 03229

July 10, 2009

Ms. Elise Zoli
Goodwin Proctor LLP
Exchange Place
Boston, MA 02109

Dear Ms. Zoli:

I have your letter of May 19, 2009, regarding the Notice of Intent to file suit served by the New Hampshire Sierra Club on your client Public Service Company of New Hampshire.

New Hampshire Sierra Club engaged me to ensure that Public Service Company of New Hampshire fully complies with the Clean Air Act.

Most certainly, we can agree that the Clean Air Act is designed to protect us all from dangerous air pollutants. Our concern is that Public Service Company of New Hampshire has undertaken a major rebuild of the plant to extend the life of the plant without complying with the Clean Air Act. The conduct of the company has been cloaked in obfuscation and obstruction. The company, which proclaims itself a good corporate citizen, has ignored the public health concerns that this coal fired power plant presents.

Public Service Company of New Hampshire did significant work on its large turbine, MK2, in 2008; has done further work this year; and, projects work each year up to and including 2013. The work has substantially increased plant generating capacity and the emissions of regulated pollutants.

I reject your legal analysis. The analysis lacks an evidentiary basis, and is entirely grounded upon the unverified assertions of fact that Public Service Company of New Hampshire refuses to subject to a transparent public process. As you admit, the turbine project was done without any Clean Air Act permitting process whatsoever. Your client did not ask for, nor obtain: a temporary construction permit; a new source review/prevention of significant [NSR/PSD] permit; and, failed to provide any information regarding the best available control technologies [BACT] for emissions of criteria pollutants, including NOx, PM, and SO2, and, information regarding the maximum achievable control technologies

[MACT] for emissions of hazardous air pollutants, including Hg. [Please remember that Public Service of New Hampshire has never obtained its Title V permit]. This lack of transparency has raised substantial concerns about the credibility of Public Service Company of New Hampshire's assertion that it complied with the law.

This concern of my client, and its thousands of members, has been exacerbated by the refusal of Public Service Company of New Hampshire to provide any information about the turbine project. For example, Public Service Company of New Hampshire has filed blanket objections to New Hampshire Sierra Club discovery requests in the appeal pending before the New Hampshire Department of Environmental Service, Air Resources Council of Temporary Permit TP – 008.

The untenability of the Public Service Company of New Hampshire refusals to provide information about the turbine work was compounded when Mr. Needleman, representing Public Service Company of New Hampshire, during a June 22, 2009, pre-hearing conference before the Air Resources Council, noted that he would not permit William H. Smagula, P.E. Director-Generation, Public Service Company of New Hampshire, the signatory to the application for Temporary Permit TP – 0008, to testify at the merit hearing of the appeal.

The New Hampshire Department of Environmental, Air Resources Council appeal process provides for an evidentiary hearing. The argument that the signatory to the permit application cannot be called as a witness in the appeal of that permit is frivolous.

I have enclosed a second discovery request that I anticipate filing in the Air Resources Council case. The request, if honored, may provide documentation that will permit an objective assessment of the credibility of the Public Service Company of New Hampshire assertions that it has not violated the Clean Air Act. In the event of litigation, the request is also a reminder to you of your Rule 26 responsibilities.

I strongly urge you to advise Public Service Company of New Hampshire to fully respond to my client's requests for information. By any standard, legal, or measured by the moral responsibility that it owes to the community and the health of its citizens, the time for hiding the facts is over.

Very Truly Yours,

Arthur B. Cunningham

cc: Lisa Jackson, Administrator, US Environmental Protection Agency
Ira W. Leighton, Action Regional Administrator, US Environmental
Protection Agency, Region 1
Mark Stein, Esq., US Environmental Protection Agency, Region 1
Honorable John Lynch, Governor of the State of New Hampshire
Thomas Burack, Commissioner, New Hampshire Department of
Environmental Services
Robert Scott, Director, Air Resources Division, New Hampshire
Department of Environmental Services
Allen Brooks, Esq., Environmental Protection Bureau, Office of the New
Hampshire Attorney General
Linda T. Landis, Senior Council, Public Service Company of New
Hampshire
Barry Needleman, Esq., McLane, Graf, Raulerson & Middleton

STATE OF NEW HAMPSHIRE

AIR RESOURCES COUNCIL

Docket No. 09-10-ARC, # 09-11 ARC and #09-12-ARC

In the Matter of Temporary Permit TP – 0008, PSNH Merrimack Station 97 River Road, Bow, NH; Facility Identification # 330130002; Application # FY07 – 01303

SECOND REQUEST FOR INFORMATION

Pursuant to Env – C 204.10 (b), appellant New Hampshire Sierra Club requests the following information from the permittee, Public Service Company of New Hampshire, a party as defined by Env – AC 204.06 (c) (3).

- 1) For the original design of unit (the design that was used for original construction) documents describing:
 - a) Boiler parameters at various conditions including, but not limited to, MCR, any overpressure conditions, and any short-term or emergency conditions. As a minimum these parameters should include:
 - i) superheater outlet flow, temperature and pressure;
 - ii) coal characteristics;
 - iii) coal flow to the boiler;
 - iv) boiler heat input; and,
 - v) boiler efficiency.
 - b) Turbine parameters at various steam flows including, but not limited to, guaranteed, VWO, and VWO at overpressure. These documents should include any turbine cycle heat balances. For each steam flow, the documents should provide:
 - i) the turbine throttle conditions (flow, temperature, and pressure);
 - ii) the condenser backpressure; and,
 - iii) net and gross electric output.
 - c) Generator design parameters (kva and pf)
 - d) Design values of the gross and net electric output of the unit.
- 2) Documents discussing or presenting the results of the tests that were done at the time of the initial startup of the unit and addressed the ability of the unit to produce the design and/or guaranteed levels of:
 - a) Boiler steam output;
 - b) Boiler efficiency;
 - c) Characteristics of and flow of coal to the boiler;
 - d) Turbine main steam or reheat steam throughput;

- e) Heat rate;
 - f) Gross electric output; and
 - g) Net electric output.
- 3) Documents that were generated at any time subsequent to the initial startup of the unit that discuss or present values for possible future changes or past actual changes in the capabilities of the boiler, turbine, generator, or unit. These should include and discussions of:
- a) any changes in the maximum steam flow from the boiler, including any changes in the maximum steam flow at which PSNH operated the boiler, either continuously or under emergency conditions;
 - b) any changes in the turbine throttle pressure at which the unit was operated;
 - c) any changes in the maximum steam flow the turbine would accept with all valves wide open;
 - d) any changes in the pf and/or maximum mva at which the generator could or would be operated; and
 - e) changes in the net or gross capability of the unit.
- 4) Documents that were generated at any time subsequent to initial startup of the unit that discuss capability testing for the unit or present results of any capability test. This should include:
- a) any test results or other capability information provided to a NERC Region or a power pool;
 - b) any descriptions of conditions under which tests should be, or were, done; and
 - c) documents discussing expected or actual results of such tests.
- 5) Documents that were generated at any time subsequent to initial startup of the unit that discuss:
- a) the capability (gross and/or net) of the unit;
 - b) the conditions under which the unit can (could) achieve a given capability;
 - c) any factors or conditions that limit(ed) the capability of the unit; and
 - d) any actual, expected, or potential changes in the capability, and the reasons for those changes.
- 6) Documents that were generated at any time subsequent to initial startup of the unit that contain the results of any heat rate tests, any boiler efficiency tests, or any turbine efficiency tests, and any discussions of expected or actual results of such tests.

- 7) Documents that were generated at any time subsequent to initial startup of the unit that contain or describe the values of the characteristics of a unit to be used in dispatching that unit. Also provide any documents that present or discuss any expected future or past actual changes in the values of those characteristics. The characteristics include, but are not limited to:
 - a) net capability;
 - b) forced outage rate;
 - c) fuel costs;
 - d) variable O&M costs;
 - e) emissions allowances costs; and
 - f) heat rate at various loads.
- 8) Documents that were generated at any time subsequent to initial startup of the unit that contain or describe the dispatch order (or dispatch ladders) for the system.
- 9) Documents that were generated at any time subsequent to initial startup of the unit that contain or describe the characteristics (including unit capability, unit heat rate at various loads, schedules for planned outages, forced outage rate, and the probabilities of various derated states of the unit) that were to be used any computer modeling including:
 - a) system planning/dispatch models;
 - b) models used to estimate the values of generating units; and
 - c) models used to justify or prioritize capital projects at the unit.
 - d) Documents should include any estimated or suggested values for the characteristics that were prepared by engineering or operations, as well as the values that were actually used in the system planning models. If model runs were done using more than one value for any characteristic of a unit, provide the different values and any discussion of the reasons for the differences.
- 10) Documents related to any analyses that were performed of any economic or emissions or regulatory effects of the turbine upgrade project.
- 11) Provide the results (output) for any runs of any system planning models (or capital project evaluation models) during the five years before and the five years after the turbine upgrade project. If there were more than 10 such runs, it would be acceptable to provide just base case runs and any cases where the values of any characteristics of Merrimack 2 differed from the analogous values used in the base cases.
- 12) Documents that were generated at any time subsequent to initial startup of the unit that contain or that discuss expected or predicted future performance of the unit or give numerical values for expected or predicted

future performance of the unit. Provide any documents that discuss goals or targets or plans for future performance of the unit or give numerical values for goals or plans or targets for future performance of the unit. In this context, the future performance measures that are of interest are heat rate, boiler heat input, electric generation, capacity factor, and the various measures of unit availability and reliability.

- 13) Documents, including drawings, related to the design of the new HP/IP turbine. This should include any preliminary designs as well as the design that was adopted.
- 14) Documents that discuss or present plans for post-project testing of the new turbine, and the results of that testing.
- 15) Documents that provide a complete set of GADS data for calendar years 2006 and 2007.
- 16) Documents that detail the maximum hourly main steam flow during calendar years 2006 and 2007.
- 17) Documents that detail the maximum hourly coal feed rate calendar years 2006 and 2007.
- 18) Documents that detail the total megawatt-hours of lost generation due to lack of system demand during calendar years 2006 and 2007.
- 19) Documents that detail the maximum hourly heat input (mmBTU) achieved during calendar years 2006 and 2007.
- 20) Documents that detail the forced outage rate (FOR) for calendar years 2006 and 2007.
- 21) Documents that detail the planned outage rate (POR) for calendar years 2006 and 2007.
- 22) Documents that detail the maintenance outage rate for calendar years 2006 and 2007.
- 23) Documents that detail the equivalent forced outage rate (EFOR) for calendar years 2006 and 2007.
- 24) Documents that detail the utilization rate for calendar years 2006 and 2007.

- 25) Top 10 contributors to EFOR (include amount in lost mwhrs) during calendar years 2006 and 2007.
- 26) Documents that list the top 10 contributors to FOR (including amount in lost mwhrs) during calendar years 2006 and 2007.
- 27) Documents that list of all capital projects performed or expected to be performed during the Clean Air Project period (2008 through 2013) that are expected to maintain or improve unit availability.

Respectfully submitted,

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Certificate of Service

I certify that a copy of this Reply was mailed to Gregory H. Smith and Barry Needleman, attorneys for Public Service Company of New Hampshire, 11 South Main Street, Suite 500, Concord, NH 03305; Melissa A. Hoffer, Esq., Conservation Law Foundation, 27 North Main Street, Concord, NH 03301; and Evan J. Mulholland, NH Assistant Attorney General, 33 Capitol Street, Concord, NH 03301, first class mail, postage prepaid, this day of July, 2009.

Arthur B. Cunningham