



**Public Service
of New Hampshire**

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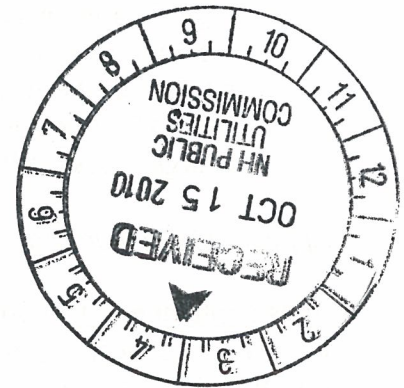
A Northeast Utilities Company

Robert A. Bersak
Assistant Secretary and
Assistant General Counsel

October 15, 2010

Ms. Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street
Concord, New Hampshire 03301

Re: *Docket No. DE 08-103*
Public Service Company of New Hampshire
Merrimack Station Scrubber Project
Request for Information



Dear Secretary Howland:

Pursuant to the Commission's Secretarial Letter, dated September 29, 2010, Public Service Company of New Hampshire ("PSNH" or the "Company") provides the attached updated Report regarding the Company's "Clean Air Project" - - the legislatively mandated installation of wet flue gas desulphurization technology ("scrubber" technology) at Merrimack Station.¹

The Commission's request for an update on the Clean Air Project comes at an appropriate time. PSNH recently announced that the construction phase of the Clean Air Project has reached the milestone of being 75% complete.² Based upon this achievement, PSNH estimates that the scrubber will be complete and operating by July, 2012, one year ahead of the statutory deadline.

In addition, the price estimate of the scrubber system has been reduced to \$430 million from \$457 million. The savings is the result of the high productivity of the workforce, favorable weather conditions that helped avoid delays, and certain commodity cost reductions. The early completion will provide for cleaner air sooner and lower costs to customers.

¹ By Secretarial Letter dated October 13, 2010, the Commission graciously granted PSNH's request to delay the due date of this filing until today. PSNH appreciates the Commission's consideration.

² A copy of PSNH's October 7, 2010 press release is attached.

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The Commission began this docket regarding the status of PSNH's Clean Air Project by issuance of a Secretarial Letter dated August 22, 2008. The Clean Air Project is mandated by RSA 125-O:11 through 18 (the state's "Mercury Emissions Program") to achieve significant reductions in mercury emissions. The New Hampshire Supreme Court has noted:

To comply with the Mercury Emissions Program, PSNH must install the scrubber technology and have it operational at Merrimack Station by July 1, 2013. See RSA 125-O:11, I. Meeting "this requirement," however, "is contingent upon obtaining all necessary permits and approvals" from the pertinent regulatory agencies. RSA 125-O:13, I. PSNH must report to the legislature annually regarding its installation of the scrubber technology, including "any updated cost information." RSA 125-O:13, IX. Under RSA 125-O:18, PSNH "shall recover all prudent costs" of installing the scrubber technology "in a manner approved by the [PUC]." Recovery of these costs "shall be ... via ... [PSNH's] default service charge." RSA 125-O:18.

Appeal of Stonyfield Farm, Inc., 159 N.H. 227, 229 (2009).

In its September 29, 2010, Secretarial letter, the Commission has directed PSNH to file updated information concerning the status of the Clean Air Project. The Commission's letter notes that this directive is part of its process of "monitoring PSNH's costs of construction of the scrubber technology at Merrimack Station...[and]...the prudence of PSNH's actions during the construction of the scrubber, including whether it avails itself of the variance procedure under RSA 125-O:17 in the event of escalating costs," citing to Order No. 24,979 dated June 19, 2009.³ The attached Report provides the updated information requested by the Commission.

³ In *Stonyfield*, decided two months after Commission Order No. 24,979, the Supreme Court unequivocally noted the legal mandate placed upon PSNH to install scrubber technology at Merrimack Station, as well as the requirement that PSNH shall recover all prudent costs of that installation. The Commission has on several occasions referenced RSA 125-O:17 as providing PSNH with an opportunity to seek relief from the legal mandate to install the scrubber. PSNH disagrees with that interpretation of the law. Under RSA 125-O:17, PSNH may "request a variance from the *mercury emissions reduction requirements*" (emphasis added) of the Mercury Emissions Program, not a wholesale exemption from the mandate to install scrubber technology. The New Hampshire Department of Environmental Services, in its Temporary Permit No. TP-0008 issued to PSNH to allow construction of the scrubber, identifies the "mercury reduction requirement" of the Mercury Emissions Program law as what the Legislature codified in RSA 125-O:13, II: "Total mercury emissions from the affected sources shall be at least 80 percent less on an annual basis than the baseline mercury input, as defined in RSA 125-O:12, III, beginning on July 1, 2013." See, Table 4, TP-0008, Item Nos. 13, 15, 17, 18. As noted in Table 4, TP-0008, Item No. 19, RSA 125-O:17 only allows PSNH to seek under the prescribed circumstances either an alternative compliance schedule or an alternative reduction requirement. There is neither provision nor authority for PSNH to seek, or for the Department of Environmental Services to grant, a variance from the public interest determinations and express mandates enacted into law requiring installation of scrubber technology by PSNH. Indeed, the express RSA 125-O:13, I mandate stating, "The owner shall install and have operational scrubber technology to control mercury emissions at Merrimack Units 1 and 2 no later than July 1, 2013" is not even included by DES in its listing of "operational and emissions limitations" that PSNH is subject to.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Bersak", with a stylized flourish at the end.

Robert A. Bersak
Assistant Secretary and
Assistant General Counsel

cc: Office of Consumer Advocate
Service List

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 08-103-1 Printed: October 15, 2010

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**
- DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**