

THE STATE OF NEW HAMPSHIRE
BEFORE THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire

**PETITION FOR THE COMMISSION TO DETERMINE WHETHER CERTAIN
MODIFICATIONS TO MERRIMACK STATION ARE IN THE PUBLIC INTEREST**

NOW COMES Freedom Logistics, LLC (“Freedom Energy”) and Halifax-American Energy Company, LLC (“HAEC”) and hereby petition the New Hampshire Public Utilities Commission, in accordance with NH Code Admin. Rule Puc 202.01, for a determination by the Commission, as required by RSA 369-B:3-a, regarding whether it is in the public interest of retail customers of Public Service of New Hampshire (“PSNH”) for PSNH to modify Merrimack Station (the “Station”) by investing in capital improvements that increase the Station’s net capability for the purpose of restoring the Station’s net power output (as measured in megawatts) that will be reduced due to the power consumption requirements or operational inefficiencies of scrubber technology to control mercury emissions. As discussed in greater detail below, PSNH may only modify Merrimack Station if the Commission “finds that it is in the public interest of retail customers for PSNH to do so and provides for the cost recovery of such modification.” RSA 369-B:3-a.¹ In support, Petitioners state the following facts and law.

1. Pursuant to RSA 125-O:11 through 18 (the “Mercury Reduction Law”), PSNH plans to install scrubber technology to control mercury emissions from Units 1 and 2 at the Station. The installation of scrubber technology will decrease net generation capability and reduce efficiency when installed on and used at the Station. See Bellman, David K., *Power Plant Efficiency Outlook*, National Petroleum Council Topic Paper, May 8, 2007 (the “Efficiency

¹ Petitioners understand that the Commission initiated an investigation, Docket No. DE 08-103 regarding the legal obligations attendant to and the cost of the PSNH scrubber installation project, which is the subject of currently pending Motions for Reconsideration. This Petition addresses only activities for the purpose of

Assessment” attached hereto as Exhibit 1); See also, RSA 125-O:13(IV)(addressing the regulatory treatment of capital improvements at the Station which PSNH may undertake to restore the diminution in capacity that will result from the installation of scrubber technology).

2. Information provided by PSNH indicates that, as part of its installation of scrubber technology, PSNH intends to undertake modifications to the Station for the purpose of restoring generating capacity.

3. In its report of September 2, 2008 (the “PSNH Report”) in Docket No. DE 08-103, PSNH discussed completed and ongoing activities related to its plans for installing the scrubber technology. The PSNH Report states that in 2007, “[t]he station worked to modify boiler combustion temperatures. Tube shields were removed from the boiler reheater to increase heat transfer and improve steam temperatures.” PSNH Report at p. 8. Modifications to the reheater that result in an increase in steam temperature will increase the output and capacity of the Station. See, Efficiency Assessment at p. 15.

4. The PSNH Report states that “[b]idding is currently in progress for items like . . . booster fans and motors.” PSNH Report at p. 12. Increased air flow can restore output reductions that result from the installation of emissions control equipment such as scrubbers. See, Efficiency Assessment at pp. 16 – 17.

5. The PSNH Report does not discuss the extent to which the installation of scrubber technology will reduce the generation capacity of the Station. According to information from ISO New England, Inc., PSNH submitted an interconnection request suggesting a possible reduction in capacity for the Station of approximately 95 MW. See, ISO New England Inc., Interconnection Request Queue (Spreadsheet), 10/17/08 (attached hereto as Exhibit 2). Cost

restoring the Station’s electric generation capacity and accordingly, is distinct from Docket No. DE 08-103 which does not distinguish between activities to install scrubber technology and activities to restore capacity.

estimates provided in the PSNH Report, however, indicate that the full pre-scrubber capacity of the Station will be restored as part of the project. PSNH Report at p. 13.

6. The PSNH Report does not distinguish between the cost and project activities necessary to restore generating capacity and those necessary to reduce mercury emissions. As discussed below, proper implementation of the Mercury Reduction Law requires that PSNH specifically identify the activities and costs associated with the restoration of generating capacity to pre-scrubber capability.

7. As provided in RSA 369-B:3-a, PSNH may modify its generation assets only “if the commission finds that it is in the public interest of retail customers of PSNH to do so, and provides for the cost recovery of such modification. . . .” This Petition seeks a determination by the Commission, as required by RSA 369-B:3-a, regarding whether it is in the public interest of retail customers of PSNH for PSNH to modify the Station in order to restore the generating capacity of the Station that will be diminished due to installation and operation of scrubber technology.

8. The Mercury Reduction Law expressly distinguishes the regulatory treatment of capital improvements (i.e., modifications) for the purpose of restoring capacity from the regulatory treatment of PSNH’s plan to install scrubber technology. Specifically, the provisions of the Mercury Reduction Law addressing cost recovery and public/ratepayer interest for the installation of scrubber technology do not apply to modifications for the purpose of restoring generation capacity. The Mercury Reduction Law does not preempt or otherwise alter the Commission’s plenary authority to review PSNH’s planned modifications to restore generating capacity at the Station.

9. Under RSA 125-O:13, PSNH “**shall** install and have operational scrubber technology to control mercury emissions” subject to the additional conditions in the Mercury Control Law. RSA 125-O:13(I)(emphasis supplied). According to the Statement of Purpose and Findings for the Mercury Reduction Law, “[t]he installation of such [scrubber] technology is in the public interest of the citizens of New Hampshire and the customers of the affected sources [including the Station].” RSA 125-O:11(VI). PSNH is expressly enabled by the statute to recover the prudently incurred costs “of complying with the **requirements** of [the Mercury Reduction Law].” RSA 125-O:18 (emphasis supplied).

10. In Commission Order No. 24,898 (September 19, 2008, suspended October 27, 2008), the Commission determined that “the Legislature has made the public interest determination and **required** the Owner of the Merrimack Station, viz., PSNH, to install scrubber technology to control mercury emissions no later than July 1, 2013.” Order No. 24,898 at p. 10.²

11. The Mercury Reduction Law does **not** mandate that PSNH restore the generating capacity of the Station to pre-scrubber levels. It provides that,

[i]f the net power output (as measured in megawatts) from Merrimack Station is reduced, due to the power consumption requirements or operational inefficiencies of the installed scrubber technology, [PSNH] **may** invest in capital improvements at Merrimack Station that increase its net capability, within the requirements and regulations enforceable by the state or federal government or both.

RSA 125-O:13(IV)(emphasis supplied). The use of the word “may” rather than “shall” indicates that PSNH is **not required** to undertake modifications to restore lost generation capacity. *City of Rochester v. Corpening*, 153 N.H. 571, 574 (2006). If PSNH intends to

² Petitioners understand that Motions for Rehearing are pending in DE 08-103 and fully support said motions. The suspended Order is cited only for the purpose of contrasting the operative provisions of the Mercury Reduction Law pertaining to the installation of scrubber technology from the provisions addressing modifications to restore lost capacity.

do so, PSNH may proceed only in accordance with all state and federal regulatory requirements.

12. Because modifications to restore lost generation capacity are **not required** by the Mercury Reduction Law, the law's provisions enabling PSNH to recover the prudently incurred costs of complying with the requirements of the statute do not apply to modifications for the purpose of restoring generation capacity. Likewise, the General Court's finding, in RSA 125-O:11(VI), that the installation of scrubber technology is in the public and ratepayers' interest, does not relate to modifications made for the purpose of restoring lost capacity. Accordingly, the plenary authority of the Commission to determine whether modifications to the Station are in the public/ratepayers' interest applies to the activities to restore lost capacity at the Station.

13. PSNH may not modify the Station for the purpose of restoring the diminution of generation capacity resulting from its installation of scrubber technology unless the Commission finds that it is the public interest of retail customers of PSNH to do so. RSA 369-B:3-a. The Commission must render a determination regarding whether such modifications are in the ratepayers' interests prior to PSNH commencing construction and installation of the modifications.³

14. Freedom Energy specializes in providing high-end management services to large end-users that are Market Participant End-Users ("MPEU"). An MPEU is a member of NEPOOL

³ The Commission's investigation and determination regarding whether modifications to restore lost capacity are in the ratepayers' interest will not result in undue delay of the installation of scrubber technology at the Station. Under the applicable New Hampshire air pollution control requirements, PSNH may not commence construction or installation of scrubber technology until after a preconstruction Temporary Air Permit is issued. RSA 125-C:11. According to the PSNH Report, air modeling necessary to support PSNH's permit application is ongoing (as of September 2, 2008) and the New Hampshire Department of Environmental Services has not prepared a proposed decision for public comment and review on PSNH's application for a Temporary Air Permit. PSNH Report at p. 10. At a minimum, issuance of a Temporary Air Permit authorizing construction and installation of scrubber technology is several months away.

and ISO-NE and purchases electricity directly from the ISO-NE hourly wholesale market. HAEC is a New Hampshire limited liability company created on July 30, 2007. HAEC is the New England agent for South Jersey Energy Company, a subsidiary of South Jersey Industries. South Jersey Energy Company is a registered competitive electric power supplier in New Hampshire. Petitioners' principal place of business is Suite 364, 816 Elm Street, Manchester, NH 03101.

WHEREFORE, Petitioners respectfully requests that the Commission immediately initiate an investigation and public proceeding to determine whether modifications at Merrimack Station to restore the diminution in capacity resulting from the installation of scrubber technology are in the public interest.

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Respectfully submitted,

Freedom Logistics LLC
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By their Attorney,

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