

**THE STATE OF NEW HAMPSHIRE  
before the  
PUBLIC UTILITIES COMMISSION**

Public Service Company of New Hampshire  
Integrated Least Cost Resource Plan

Docket No. DE 07-108

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S  
OBJECTION  
TO  
FREEDOM/HALIFAX  
MOTION FOR RECONSIDERATION AND REHEARING**

Pursuant to Rule Puc 203.07 (f), Public Service Company of New Hampshire ("PSNH") hereby objects to the March 2, 2009, "Motion for Reconsideration and Rehearing" ("Motion") filed by Freedom Energy Logistics, LLC and Halifax-American Energy Company, LLC ("Freedom/Halifax"). Freedom/Halifax fail to fully set forth any ground for finding that Commission Order No. 24,945 ("Order") is unlawful or unreasonable. RSA 541:4; Rule Puc 203.33. Moreover, Freedom/Halifax are barred from requesting the relief requested in the Motion because, as settling parties, they waived any right to raise the issues contained in their Motion.

In support of this Objection PSNH says the following:

1. Order No. 24,945 issued February 27, 2009, accepts PSNH's 2007 revised Least Cost Integrated Resource Plan. It also approves the Partial Settlement Agreement filed in this proceeding.

2. In the Order, the Commission decided to, "require PSNH to include in future LCIRPs an economic analysis of retirement for any unit in which the alternative is the investment of significant sums to meet new emissions standards and/or enhance or maintain plant performance." Order 24,945 at 16. The Order also calls for the next LCIRP to be filed on or before February 28, 2010. *Id* at 20

3. Freedom/Halifax filed the Motion seeking the Commission to significantly alter Order No. 24,945 in two ways: i) notwithstanding the Commission's previous decisions in Order Nos. 24,898 and 24,914 in Docket No. DE 08-103, and the pending New Hampshire Supreme Court appeal thereof, to immediately assert jurisdiction over the Merrimack Station scrubber project; and, ii) by requiring the filing of a "Continued Unit Operation Study" for Merrimack Station on or before June 1, 2009.

4. Freedom/Halifax claim that the Order is unlawful or unreasonable by brashly asserting, "[T]he Commission's decision...is an unsustainable exercise of its discretion and contrary to the public interest." Motion, ¶4.

5. To the contrary, the Commission's decision to rely upon its past decisions regarding its authority over the Merrimack Station scrubber project is entirely consistent with the public interest. Merely five weeks ago, in *State v. Hebert*, --- A.2d ----, 2009 WL 196566 N.H., (January 29, 2009), the New Hampshire Supreme Court made this patently clear:

Overruling any part of established precedent is not a task we undertake lightly. The doctrine of stare decisis "demands respect in a society governed by the rule of law," because "when governing legal standards are open to revision in every case, deciding cases becomes a mere exercise of judicial will, with arbitrary and unpredictable results." *State v. Holmes*, 154 N.H. 723, 724 (2007) (quotations omitted).

In addition, the acceptance of a settlement, and the enforcement thereof, is also consistent with public policy. RSA 541-A:38, Rule Puc 203.20.

6. There is simply no basis for requiring PSNH to file a Continued Unit Operation Study for Merrimack Station by June 1, 2009. Freedom/Halifax contend that such a study, to be conducted and filed in the near-term, is called for because "PSNH is on the verge of irrevocably committing hundreds of millions of dollars to the continuing operation of Merrimack Station...." Motion, ¶4. As the Commission is well aware, the Legislature by statute has required the installation of the scrubber:

## **125-O:11 Statement of Purpose and Findings.**

The general court finds that:

I. It is in the public interest to achieve significant reductions in mercury emissions at the coal-burning electric power plants in the state as soon as possible. The requirements of this subdivision will prevent, at a minimum, 80 percent of the aggregated mercury content of the coal burned at these plants from being emitted into the air by no later than the year 2013. To accomplish this objective, the best known commercially available technology shall be installed at Merrimack Station no later than July 1, 2013.

This requirement for installation of the scrubber, as soon as possible, being expressly mandated by law, cannot be second-guessed by the Commission. Again, what Freedom/Halifax are seeking would result in the setting-aside of Order Nos. 24,898 and 24,914.

7. The instant docket is a least cost plan proceeding undertaken pursuant to RSA 378:38 et seq. to determine if PSNH has adequately complied with the provisions of the Least Cost Planning statutes. The plan was filed in September of 2007 representing PSNH's planning criteria in the months before the filing. The next least cost plan will include the considerations contained in the Partial Settlement Agreement and the Commission's Order No. 24,945. There is no place in this proceeding investigating the 2007 planning process for a continued unit operation study to be prepared and submitted nearly two years after the plan was filed.

8. Freedom/Halifax are parties to the Partial Settlement Agreement (Exhibit 6) which the Commission approved in the Order. As settling parties, Freedom/ Halifax have waived any right to raise the instant issues in a Motion for Rehearing. The Partial Settlement Agreement clearly indicates that all issues but one (the "Unresolved Demand Side Issue" discussed in ¶IV of the Settlement) were resolved by the Settlement: "One unresolved issued is summarized herein...." Settlement, Preamble; Exhibit 6 at 1.

9. The Settlement notes that the Parties and Staff did not agree on all issues, but they agreed to disagree at this time in order to present a resolution in this proceeding to the Commission:

“The Parties and Staff disagree as to whether the information and analyses included in the 2007 LCIRP are sufficient to determine whether the resources choices identified in the plan are least cost and in the public interest, **but do not believe that such disagreement must be resolved at this time.**” General Settlement Terms, ¶III, A, 2. Partial Settlement Agreement, Exhibit 6 at 3 (Emphasis added.).

By express agreement of the Parties and Staff, including Freedom/Halifax, the issue of requiring a Continued Unit Operation Study for Merrimack Station was not reserved as an issue remaining for discussion, litigation or resolution in this proceeding. As a party to the Partial Settlement Agreement, Freedom/Halifax ought to be held to their bargain. Otherwise, the time and effort devoted to crafting and presenting such settlements to the Commission would be worthless.

10. The parties to the Partial Settlement Agreement, including Freedom/Halifax, agreed that PSNH would file its next LCIRP one year after the Commission approved its current plan. Settlement, ¶III, A, 5; Exhibit 6 at 4. The Commission specifically approved this provision of the Partial Settlement Agreement: “FURTHER ORDERED, that Public Service Company of New Hampshire file its next least cost integrated resource plan on or before February 28, 2010.” Order, at 20. PSNH will comply with this filing requirement, and such filing will include the required economic analysis of retirement for any unit in which the alternative is the investment of significant sums to meet new emissions standards and/or enhance or maintain plant performance.

11. Finally, the parties to the Partial Settlement Agreement, including Freedom/Halifax, agreed that,

The provisions of this Partial Settlement Agreement are not severable, and this Partial Settlement Agreement is conditioned on its approval in full by the Commission. If the Commission does not approve this Partial Settlement Agreement in its entirety, without change or condition, or if the Commission makes any findings that go beyond the scope of this Partial Settlement Agreement, and any of the Parties are unable to agree with such changes, conditions or findings, such party shall notify the Commission and the other Parties and Staff within seven days of the issuance of the Commission’s order. Upon such notification, this Partial Settlement Agreement shall be deemed withdrawn and shall not constitute part of the record in this or any proceeding or be used for any purpose. Exhibit 6 at 8.

If the Commission were to grant the requests made by Freedom/Halifax in their Motion, the entire foundation of the Order would come undone. The 2007 ILCRP proceeding would once again be unresolved, requiring additional, and unnecessary time and effort of the Commission, Staff, and the other parties.

WHEREFORE, PSNH respectfully requests that the Commission deny the Motion for Rehearing a Reconsideration and grant such further relief as may be just and equitable.

Respectfully submitted,

**Public Service Company of New Hampshire**

March 10 2009  
Date

By: Gerald M. Eaton  
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#### **CERTIFICATE OF SERVICE**

I hereby certify that, on the date written below, I caused the attached Objection to the Motion for Reconsideration or Rehearing to be hand delivered or sent by pursuant to Puc § 203.02 and § 203.11(c) to the persons on the attached Service List.

March 10 2009  
Date

Gerald M. Eaton  
Gerald M. Eaton