

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

Docket No. DE 08-103

**INVESTIGATION OF PSNH'S INSTALLATION OF SCRUBBER TECHNOLOGY AT
MERRIMACK STATION**

**MOTION BY CERTAIN COMMERCIAL RATEPAYERS
FOR SUSPENSION OF ORDER**

Pursuant to RSA 541:5, Stonyfield Farm, Inc., (10 Burton Drive, Londonderry, NH 03053), H & L Instruments, LLC (PO Box 580, Hampton, NH 03862), and Great American Dining, Inc. (PO Box 581, Ashland, NH 03217) (collectively, "Commercial Ratepayers") respectfully move for suspension of the Commission's Order dated September 19, 2008 ("Order"). In support of this Motion, the Commercial Ratepayers say:

1. The Commercial Ratepayers incorporate herein by reference their Motion for Rehearing dated October 17, 2008.

2. After filing their Motion for Rehearing, the Commercial Ratepayers learned from press reports that on November 3, 2008 PSNH intends to begin preliminary site work relating to the installation of the scrubber technology.

3. In the Commission's Order, it ruled (at 13): (A) that it "lacks the authority to make a determination pursuant to RSA 369-B:3-as to whether this particular modification [for installation of scrubber technology] is in the public interest"; and (B) that its "authority is limited to determining at a later time the prudence of the costs of complying with the requirements of RSA 125-O:11-18 and the manner of recovery for prudent costs."

4. Insofar as the rulings quoted in ¶3, above, imply that PSNH faces no legal impediment to the installation of scrubber technology and that this point may bear upon the

“prudence” of the related costs, it may be interpreted as further implying that such costs will likely be deemed prudent.

5. The Commercial Ratepayers respectfully submit that no such “bootstrapping” on the prudence issues should be permitted.

6. To avert any such “bootstrapping,” the Commercial Ratepayers respectfully submit that the Commission should suspend its Order.

7. Such a suspension is warranted in light of: (A) the materially increased costs for the scrubber technology; (B) the decision of PSNH to proceed with its installation nevertheless; and (C) the irreparable harm that will thereby result to the Commercial Ratepayers.

8. As the Commercial Ratepayers said in their Motion for Rehearing:

2.4 In deciding that as a result of RSA 125-O it “lacks authority to pre-approve installation,” the Commission has misconstrued RSA 125-O, particularly RSA 125-O:11, V and VI, which provide:

V. The installation of scrubber technology will not only reduce mercury emissions significantly but will do so without jeopardizing electric reliability and with **reasonable costs** to consumers.

VI. The installation of **such** technology is in the public interest of the citizens of New Hampshire and the customers of the affected sources. [Emphasis added.]

A. RSA 125-0:11 took effect on June 8, 2006.

B. As of June 8, 2006, the estimated cost of installation of the scrubber technology at Merrimack Station was **\$250 million**. Commission letter of August 22, 2008 to PSNH, citing the 10-Q filed on August 7, 2008 with the United States Securities and Exchange Commission by Northeast Utilities (NU), PSNH’s parent company. As stated in the Commission’s August 22 letter, “In its 10-Q, NU identified an estimated project **cost of \$457 million** [for installation of the scrubber technology at Merrimack Station], which represents approximately an **80 percent increase over the original estimate of \$250 million**.” (Emphasis added.) *See also, e.g.:* (1) PSNH’s letter to the Commission of September 2, 2008, saying (at 3), “It should surprise no one that the **costs** of this project have **increased significantly over the original preliminary estimates made in late 2004-2005**.” (Emphasis added.); (2) PSNH’s Report to the Commission of

September 2, 2008, saying (at 7), “**Initial engineering** was completed by Sargent and Lundy (“S&L”) based upon information provided in **2005**.... **Budgetary quotes** and lead times were solicited from major scrubber vendors, also during **2005**.” (Emphasis added.); (3) *Id.*, saying (at 11), “The **initial estimated cost** of the project was based on a Sargent & Lundy estimate performed in **2005**. There have been **significant increases in the cost of raw materials, steel, labor and energy, since this estimate was made**....” (Emphasis added.); and (4) *Id.*, saying (at 13), “PSNH, in conjunction with URS, has developed a **revised project estimate of \$457 million**.” (Emphasis added.)

C. Consistent with the foregoing is the legislative history underlying the enactment of RSA 125-O:11, which was part of HB 1673. Terry Large of PSNH testified on HB 1673 before the Senate Committee on Energy and Economic Development on April 11, 2006, and indicated that the estimated cost of the scrubber technology would be **\$250 million**. Further, on the same date and to the same Committee, the Department of Environmental Services reported as follows: “Based on data shared by PSNH, the total capital cost for this full redesign **will not exceed \$250 million dollars (2013\$) or \$197 million (2005\$)**.” Letter of Michael P. Nolin to the Honorable Bob Odell, Chairman NH Senate Energy and Economic Development Committee, dated April 11, 2006 (emphasis added).

D. Hence, the “reasonable costs” to which RSA 125-O:11, V refers is **\$250 million**. Necessarily, therefore, when the Legislature provided in RSA 125-O:11, VI that “The installation of **such** technology is in the public interest” (emphasis added), it was referring to a technology that had a cost of **only \$250 million**. It was **not** referring to technology having a cost of **\$457 million**. If a counterargument is advanced that the reference to “such technology” would include a cost as high as \$457 million, then that same counterargument could be used to support a cost as high as \$1 billion or even \$10 billion. The result is absurd — and thus could not have been what the Legislature intended. *See, e.g., Soraghan v. Mt. Cranmore Ski Resort*, 152 N.H.. 399 (2005).

WHEREFORE, the Commercial Ratepayers respectfully request that the Commission enter and Order:

- A. Granting this Motion; and
- B. Granting the Commercial Ratepayers such other relief as is just.

Date: October 20, 2008

Respectfully submitted,
STONYFIELD FARM, INC., H & L
INSTRUMENTS, LLC, and GREAT
AMERICAN DINING, INC.

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