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dates, Viz: ..... 1/18/09 .....

(Signed) ..... Charles Gilbert .....

UNION LEADER CORPORATION

State of New Hampshire,  
Hillsborough, SS. (Dated) ..... 1/15/09 .....

Subscribed and sworn to by the said .....

Before me  
Marsha A. McGinnis  
NOTARY PUBLIC  
State of New Hampshire  
My Commission Expires 04/19/2011

## Legal Notice

### THE STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DE 08-145

#### ORDER OF NOTICE

On November 13, 2008, Freedom Logistics, LLC and Hailux-American Energy Company, LLC (collectively, the Petitioners) filed a petition seeking a determination whether certain actions by Public Service Company of New Hampshire (PSNH) at Merrimack Station (Station) constitute modifications to PSNH's generation assets that require a public interest finding by the Commission. Specifically, the Petitioners state that PSNH has made or will make capital improvements to Merrimack Station for the purpose of increasing the Station's generating capacity, which would be reduced as a result of the installation and operation of scrubber technology. Petitioners claim that RSA 125-O:11-18, which requires PSNH to install scrubber technology, does not require it to make capital improvements to increase the Station's generating capacity as a result of installing scrubber technology. Petitioners argue that such capital improvements may only be undertaken, pursuant to RSA 369-B:3-a, "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."

On November 24, 2008, PSNH filed a motion to dismiss the petition. In addition to arguments regarding the Petitioners' standing, PSNH argues that RSA 125-O:13, IV gives PSNH the authority to make certain capital improvements at the Station, including those that increase net capacity to mitigate the loss of net power output attributable to installation of scrubber technology. According to PSNH, the Legislature's grant of authority to PSNH to make such capital improvements obviates a public interest determination by the Commission under RSA 369-B:3-a. PSNH acknowledged that its expense for capital improvements would be subject to a traditional prudent investment rule determination by the Commission. PSNH further argued that it makes capital improvements to the Station as part of its routine maintenance activities and that it would not be reasonable to interpret RSA 369-B:3-a as requiring the Commission's pre-approval of such improvements.

On December 5, 2008, the Petitioners filed an objection to the motion to dismiss. PSNH filed a motion to strike the objection on December 15, 2008, which was followed, on December 24, 2008, by the Petitioners' objection to the motion to strike the objection.

The filing raises, *inter alia*, issues related to whether PSNH's capital investments at Merrimack Station constitute a modification within the meaning of RSA 369-B:3-a and whether such capital improvements are authorized by RSA 125-O:13, IV. Each party has the right to have an attorney represent them at their own expense.

**Based upon the foregoing, it is hereby ORDERED**, that a Prehearing Conference, pursuant to N.H. Admin. Rules Pub 203.15, be held before the Commissioner located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on January 16, 2009 at 9:00 a.m., at which each party will provide a preliminary statement of its position with regard to the petition and any of the issues set forth in N.H. Admin. Rule Puc 203.15 shall be considered; and it is

**FURTHER ORDERED**, that, pursuant to

ing. PSNH argues that RSA 125-O:13, IV gives PSNH the authority to make certain capital improvements at the Station, including those that increase net capacity to mitigate the loss of net power output attributable to installation of scrubber technology. According to PSNH, the Legislature's grant of authority to PSNH to make such capital improvements obviates a public interest determination by the Commission under RSA 369-B:3-a. PSNH acknowledged that its expense for capital improvements would be subject to a traditional "prudent investment rule" determination by the Commission. PSNH further argued that it makes capital improvements to the Station as part of its routine maintenance activities and that it would not be reasonable to interpret RSA 369-B:3-a as requiring the Commission's pre-approval of such improvements.

On December 5, 2008, the Petitioner's filed an objection to the motion to dismiss. PSNH filed a motion to strike the objection on December 15, 2008, which was followed, on December 24, 2008, by the Petitioner's objection to the motion to strike the objection.

The filing raises, inter alia, issues related to whether PSNH's capital investments at Merrimack Station constitute a modification within the meaning of RSA 369-B:3-a and whether such capital improvements are authorized by RSA 125-O:13, IV. Each party has the right to have an attorney represent them at their own expense.

**Based upon the foregoing, it is hereby ORDERED**, that a Prehearing Conference, pursuant to N.H. Admin. Rules Pub 203.15, be held before the Commissioner located at 21 S. Pratt St., Suite 10, Concord, New Hampshire on January 16, 2009 at 9:00 a.m., at which each party will provide a preliminary statement of its position with regard to the petition and any of the issues set forth in N.H. Admin. Rule Pub 203.15 shall be considered; and it is

**FURTHER ORDERED**, that, pursuant to N.H. Admin. Rules Pub 203.12, the Petitioner's shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than January 9, 2009, in a newspaper with general circulation in those portions of the state in which operations described in the Petition are conducted.

Publication to be documented by affidavit filed with the Commission on or before January 16, 2009; and it is

**FURTHER ORDERED**, that, pursuant to N.H. Admin. Rules Pub 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to the Petitioner, PSNH and the Office of the Consumer Advocate on or before January 13, 2009, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Admin. Rule Pub 203.17 and RSA 541-A:32, 1(b); and it is

**FURTHER ORDERED**, that any party objecting to a Petition to Intervene make said Objection on or before January 16, 2009.

By order of the Public Utilities Commission of New Hampshire this fifth day of January, 2009.

Debra A. Howland  
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Pratt St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.  
(UL - Jan. 8)