



Douglas L. Patch

dpatch@orr-reno.com
Direct Dial 603.223.9161
Direct Fax 603.223.9061
Admitted in NH and MA

March 18, 2013



VIA FIRST CLASS MAIL AND VIA EMAIL

Debra A. Howland, Executive Director & Secretary
New Hampshire Public Utilities Commission
21 South Fruit St., Suite 10
Concord, NH 03301-2429

Re: DE 11-250, Public Service Company of New Hampshire Investigation of Merrimack Station Scrubber Project and Cost Recovery – Response to PSNH Letter of March 14, 2013

Dear Ms. Howland:

On Behalf of TransCanada, an intervenor in the above-captioned proceeding, I am submitting this response to Public Service Company of New Hampshire's letter of March 14, 2013. In that letter PSNH said it wished to bring to the Commission's attention a recent New Hampshire Supreme Court case that it said is relevant to the Commission's deliberations in this docket. PSNH then argued that the case it cited, which addresses the meaning of the word "shall", supports PSNH's arguments that PSNH had no choice but to build the scrubber regardless of cost or economic infeasibility because the word "shall" is used five dozen times in the scrubber law.

As it has done in other pleadings before this Commission in this docket, PSNH is once again asking the Commission to ignore the plain language of the variance provision in the scrubber law. PSNH is once again asking the Commission to accept an interpretation of the law that the Commission has already recognized would lead to an absurd and illogical result. The variance provision, RSA 125-O:17, allowed the owner to request a variance from the mercury emissions reduction requirements of this subdivision by submitting a written request to the department and providing sufficient information concerning the conditions or special circumstances that a variance from the applicable requirements is necessary, i.e. to substantiate that economic infeasibility existed.

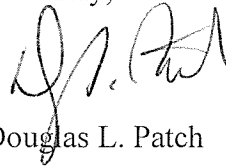
As noted by PSNH and others in this docket the provisions of the scrubber law are non-severable under RSA 125-O:10, thus to adopt PSNH's argument the Commission would have to ignore the variance provision, contrary to principles of statutory construction. The absurd or illogical result of PSNH's interpretation of the law, as noted in pleadings before the Commission and by the Commission itself in its order, is that PSNH would have been free to spend an

unlimited amount of money on the scrubber and never had to seek a variance from the law. The Commission recognized this when it said that PSNH's interpretation that the law required installation irrespective of cost would have allowed PSNH to install technology costing billions and that this "flies in the face of common sense". Order No. 24,445 at 25.

If the principal motivation of RSA 125-O was to reduce environmental mercury (the purpose clause in the law states 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", RSA 125-O:11,I), TransCanada submits that closing the plant and eliminating the additional costs and risks for PSNH default service customers generated by the scrubber, rather than just lessening the impact on environmental mercury through an enormously expensive bolt-on solution to a 40 year old plant, would have been the ultimate response to achieve the goals of the law. Through the plain words of the statute, the Legislature clearly provided that option. As aptly put by the Commission in its Order: "Retirement of Merrimack Station would effectively eliminate all emissions from the station and leave only continued emissions from PSNH's other generation units reducing PSNH's overall mercury emissions significantly." Order at 25. In many similar situations in this country and in Canada that option relative to an aging and inefficient coal fleet has been exercised as the preferred economic solution. Merrimack Station remains one of the principal sources of air pollution in the State of New Hampshire, and any "environmental benefit" (particularly with consideration to continuing impacts in the Merrimack River) in PSNH's choice of options available to it is an illusion.

Thank you for your attention to this matter. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "D. L. Patch", written over the printed name.

Douglas L. Patch