

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 07-108

**MOTION FOR RECONSIDERATION AND REHEARING
TO BRING FORWARD THE DATE FOR PSNH TO FILE THE
“MERRIMACK CONTINUED UNIT OPERATION STUDY”
FROM FEBRUARY 28, 2010 TO JUNE 1, 2009**

NOW COME Intervenors Freedom Logistics, LLC (Freedom) and Halifax American Energy Company, LLC (Halifax), by and through their undersigned counsel, and pursuant to N.H. RSA 541:3 and 541:4, respectfully move the New Hampshire Public Utilities Commission (“Commission”) to rehear and reconsider Order No. 24,945 (February 27, 2009). In support of this Motion, the Moving Parties state as follows:

1. A hearing in this proceeding was held on October 14, 2008 during which

TransCanada, Freedom and Halifax questioned PSNH witnesses concerning PSNH’s decision not to include divestiture and retirement of the Merrimack Station generating facility as options in its supply-side assessment. PSNH stated that such issues are governed by RSA 369-B:3-a and are not required as part of an LCIRP based upon Order No. 24,695. Nevertheless, TransCanada, Freedom and Halifax recommended in their closing statements that the Commission require PSNH to do a continuing operation study as well as analysis of divestiture in the next LCIRP. The intervenors argued that requiring PSNH to analyze new generation options without also looking at retirement or divestiture of existing generation was contrary to the basic principles of least cost planning.¹

Order No. 24,945 at 11.

¹ MR. RODIER: Okay. Thank you very much. Mr. Chairman, Commissioners, I think the record is pretty clear here. There is nothing in this Least Cost Plan that pertains to retirement or mothballing of any PSNH generating stations, and that includes Merrimack Station. It's very, very difficult to see, to rationalize how a Least Cost Plan could be adequate, without looking at whether or not anything in the existing fleet should be retired. Unfortunately, PSNH seems to be interpreting a prior order of the Commission as saying that the Commission said "we didn't have to do it." I really don't think that's the case.... Now, at this point, there is the study that was submitted on I think it was September 7th. I'd suggest the Commission take administrative notice of that study in this proceeding. One reason would be that the estimated 15 year levelized busbar cost of Merrimack Station is estimated to be 9.928 cents per kilowatt-hour. That's higher than the current market price. But, again, that's really all I wanted to say. I think there's a big glaring omission in this plan and in this proceeding.

2. As a result of the arguments of TransCanada, Freedom and Halifax, the Commission, inter alia, issued the following ruling regarding “Merrimack Continued Unit Operation Study:”

Early retirement of existing power plants for economic reasons is a practical option for utility planners if continued operation entails the expenditure of significant investment dollars. For this reason, we will 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.

Id. at 16.

3. However, in its Order, the Commission did not require PSNH to file its next least cost integrated resource plan, including the “Merrimack Continued Unit Operation Study,” until February 28, 2010. Id. at 20.

4. Under current circumstances², the Commission’s decision to not require PSNH to file the “Merrimack Continued Unit Operation Study” until February 28, 2010 is an unsustainable exercise of its discretion and contrary to the public interest. In a very recent filing with the Securities and Exchange Commission, Northeast Utilities made the following assertion on behalf of PSNH with respect to the Merrimack Clean Air Project:

On December 11, 2008, several parties involved in the filing of the October 2008 motion for rehearing filed an appeal with the New Hampshire Supreme Court requesting that the Court overturn the NHPUC's finding that it lacked present authority over this matter. The Supreme Court has indicated that it will hear this appeal, but has not yet issued a schedule for oral arguments. PSNH has begun site work for this project and has capitalized approximately \$27.5 million as of December 31, 2008. While PSNH does not expect the outcome of this appeal to adversely impact its ability to recover incurred costs from customers, should the Clean Air Act project be canceled for any reason, resulting contract cancellation payments and termination costs would likely amount to a substantial portion of the **approximately \$250 million of contractual commitments expected to be entered into by March 31, 2009**. The actual total would depend on the timing of a cancellation, if it were to occur, and related negotiations with vendors

Form 10-K, Northeast Utilities (February 27, 2009) at 45.

Time is clearly of the essence here. PSNH is on the verge of irrevocably committing hundreds of millions of dollars to the continuing operation of Merrimack Station notwithstanding the Commission’s ruling in this proceeding that it will require 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” to be filed no later than

² “HB 496 is one of two bills on the Bow plant now before lawmakers. SB 152, sponsored by Sen. Harold Janeway, would require the PUC to conduct a fast-track study of the scrubber project to determine if it is still in the interest of retail customers.” UnionLeader.com, *State House Dome*, Sunday, March 1, 2009.

February 28, 2010. The potential for stranded cost incurrence and ratepayer impact is monumental.

WHEREFORE, for all of the foregoing reasons, Freedom Logistics, LLC (Freedom) and Halifax American Energy Company, LLC respectfully request the Commission to:

- A. Reconsider its decision in this proceeding to not require PSNH to file the "Merrimack Continued Unit Operation Study" until February 28, 2010;
- B. Bring forward the date for PSNH to file the "Merrimack Continued Unit Operation Study" to June 1, 2009;
- C. Convene an adjudicative proceeding as provided in N.H. Admin. Rule PUC 2505.13 to allow a critical, objective analysis of PSNH's "Merrimack Continued Unit Operation Study" by Staff (and any consultants it may employ), OCA and any other interested party, with full rights of discovery and cross-examination; and
- D. Grants such other and further relief as may be just and equitable.

Respectfully submitted,
FREEDOM LOGISTICS LLC
HALIFAX-AMERICAN ENERGY
COMPANY, LLC

By their Attorneys

/s/ James T. Rodier

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Dated: March 2, 2009

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CERTIFICATION OF SERVICE

Pursuant to Rules Puc 203.02(2) and Puc 203.11, I have served copy of this petition on each person identified on the commission's service list for this docket.

/s/ James T. Rodier