

THE STATE OF NEW HAMPSHIRE

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March 27, 2009

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



Re: DE 08-145 – Freedom Logistics, LLC and Halifax-American Energy Company,
Investigation into Modifications

Dear Ms. Howland:

This proceeding originated with a November 13, 2008 filing by Freedom Logistics, LLC and Halifax-American Energy Company (collectively, the Petitioners) seeking a determination whether certain actions by Public Service Company of New Hampshire (PSNH) at Merrimack Station constitute modification's to PSNH's generation assets that require a public interest finding by the Commission, pursuant to RSA 369-B:3-a. In addition to RSA 369-B:3-a, the case also involves the question of whether PSNH is allowed to make certain capital improvements at Merrimack Station pursuant to RSA 125-O:13, IV.

A prehearing conference was held on January 16, 2009 during which the Chairman stated,

“I’m not persuaded that extensive discovery is required in the first instance. We would like to address these issues in the most efficient way possible...What I would like the parties to do, in the technical session following this prehearing conference this morning, is start the process of arriving at a stipulated set of facts. I think that’s the soundest way for us to proceed.

I assume all the parties agree that they would like us to try to come to a resolution of this issue in the quickest, most efficient way possible. And so, I would like to see a good faith effort by all the parties to come to some stipulated set of facts. If there are characterizations about what those facts mean, then that’s going to be something that we can deal with through written submissions.

And, I think my earlier formulation is the better way to proceed, in terms of ‘do these facts indicate that the actions of the Company rise to the level of a modification that would fall within the parameters of 369-B:3-a?’ And ‘with respect to 125-O:13, IV, even if it is a modification, is the Company permitted to undertake those actions without our approval?’ If there’s some other issues that the parties think should be part of that, of those written submissions, then I would like you to consider that in the technical session. I’m hopeful we can get a joint proposal on how to proceed. But, as always, if there’s some dispute about how we proceed, we’ll review any opposing positions.”¹

Considering the Commission’s intent to try to resolve the issues in this proceeding in the quickest, most efficient way possible and the passage of more than two months since the prehearing conference, Staff is providing this letter to update the Commission to the activities that have transpired since the January 16, 2009 prehearing conference regarding the development of a set of stipulated facts.

During the technical session that immediately followed the prehearing conference, the Petitioners, PSNH, Conservation Law Foundation (CLF), the Office of Consumer Advocate (OCA) and Staff scheduled a meeting for February 3, 2009 to try to develop a set of agreed-upon facts. While an attempt was made to come to agreement on some facts, it was not successful. Coming out of that meeting, PSNH was provided with some discovery requests to which it provided responses on February 20. On February 26, 2009, Staff and OCA circulated a proposed stipulation of facts to try to get the process moving along. Since that time, the process has moved quite slowly with e-mail exchanges from the parties involved expressing certain facts to which they could stipulate and others to which they would either not stipulate or could not stipulate without the provision of additional information.

Realistically, the existence of various legal challenges to the project, here at the Commission and in other arenas, has done nothing but complicate the exercise of attempting to agree to a set of stipulated facts in this proceeding. Understandably, the parties appear to only be willing to stipulate to those facts that either are in support of, or will not harm, their respective legal positions in the various forums. What that leaves us with, however, is a set of facts that may not necessarily be all that helpful to the Commission in deciding the legal questions at issue in this proceeding. As of the last iteration viewed by Staff, the proposed set of facts for which there appeared to be general agreement were in the nature of the dates of the planned outage that took place at Merrimack Station during 2008, the work that was done during that outage, the costs of the turbine replacement work that was performed, the net book value of the plant as of a certain date, etc. While those are indeed facts, in Staff’s view those facts will not go far in helping the Commission address the applicability and/or permissibility of RSA 369-B:3-a and RSA 125-O:13, IV. In addition, requests for additional information bring us

¹ Transcript of January 16, 2009 prehearing conference at 59-60.

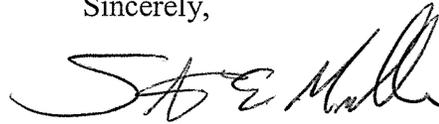
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back to the discovery process that the Commission was hoping to avoid and did not initially deem necessary.

In light of all the above, and in the interest of not prolonging this proceeding any longer than necessary, Staff recommends that the Commission direct the parties to submit a stipulated set of facts by the close of business on Wednesday, April 1, 2009. Considering the likelihood that the parties may not agree on how to proceed with the remainder of the proceeding, Staff also recommends that the parties be directed to file, also on April 1, their recommendations as to how the case should proceed going forward. Following the provision of those materials, Staff believes the Commission will be in a better position to decide the best path to move forward with this proceeding.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "S E Mullen". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Steven E. Mullen
Assistant Director – Electric Division

cc: Service list