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The Northeast Utilities System

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April 1, 2009

HAND DELIVERED

Thomas S. Burack, Commissioner
NH Department of Environmental Services
Chairman, NH Site Evaluation Committee
29 Hazen Drive
Concord, NH 03302

NH DEPT OF
ENVIRONMENTAL SERVICES

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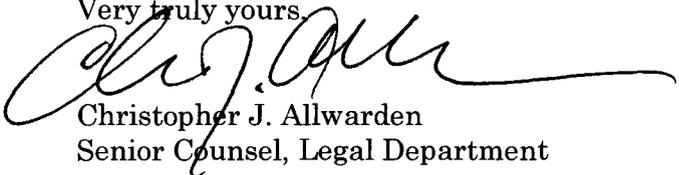
Re: SEC Docket No. 2009-01 – Motion for Declaratory Ruling Regarding
Modifications to Merrimack Station Electric Generating Facility in Bow

Dear Chairman Burack:

The undersigned is counsel to Public Service Company of New Hampshire (PSNH). Enclosed for filing with the Site Evaluation Committee in the above docket please find the original and 15 copies of the **Objection of Public Service Company of New Hampshire** to the Motion for Declaratory Ruling filed by the Campaign For Ratepayers Rights, et al.. For the reasons set forth in PSNH's Objection, PSNH is requesting that the Motion for Declaratory Ruling be summarily denied and dismissed.

Thank you for your attention to this matter.

Very truly yours,



Christopher J. Allwarden
Senior Counsel, Legal Department

Encs.

cc: Patrick J. Arnold, Campaign For Ratepayers Rights
Kristine E. Kraushaar, Esq., Conservation Law Foundation
N. Jonathan Peress, Esq.
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STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

SEC Docket No.2009-01

RE: MOTION FOR DECLARATORY RULING
REGARDING MODIFICATIONS TO MERRIMACK STATION
ELECTRIC GENERATING FACILITY IN BOW

OBJECTION OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

NOW COMES Public Service Company of New Hampshire (“PSNH”), by its undersigned attorney, and respectfully objects to and requests dismissal of the motion of the Campaign for Ratepayer Rights, the Conservation Law Foundation, Freedom Logistics LLC, Granite Ridge Energy, LLC, Halifax-American Energy Company LLC, TransCanada Hydro Northeast, Inc., and the Union of Concerned Scientists (collectively, the “Movants”), for a declaratory ruling filed with the New Hampshire Site Evaluation Committee (the “Committee”) on March 6, 2009, and in support of its objection and request for dismissal states as follows:

A. Movants Lack Statutory Standing to Seek the Relief Requested

1. The Movants are an *ad hoc* group of unrelated and unregulated organizations devoted to mounting legal and regulatory challenges to PSNH’s installation of a pollution control system, commonly known as the “Scrubber Project,” at PSNH’s coal-fired Merrimack Generating Station in Bow, New Hampshire. PSNH believes and has publicly stated that Movants have as their ultimate goal the delay and cancellation of the Scrubber Project so as to result in the permanent closure of Merrimack Station, a step PSNH would be

forced to take if PSNH's ability to install necessary emission controls at the plant was curtailed or eliminated.¹

2. There is no provision in New Hampshire RSA Chapter 162-H (generally, the "Siting Law") expressly authorizing the Committee to entertain a motion for a declaratory ruling. Movants have cited to the Committee's procedural rules, specifically N.H. Admin. Rule Site 203.01, which states that any person may submit a "motion" for declaratory ruling from the Committee "on matters within its jurisdiction." The plain language of this Rule defines and limits the Committee's authority to issue a declaratory ruling to matters within its jurisdiction, and not to a threshold question of whether or not a particular matter is or is not within the Committee's jurisdiction.

3. The specific request of the Movants is for "a ruling as to whether [the Committee] has jurisdiction over mercury scrubber modifications to Merrimack Station . . ." Motion for Declaratory Ruling, p. 1. The Siting Law expressly dictates that the procedural mechanism by which such a jurisdictional question is raised and determined is by the filing of a "Petition," defined in RSA 162-H:2, X-a, to mean "a request to the committee to rule on the applicability of this chapter to a particular bulk power supply facility or energy facility."² *See also*, Site 102.13(a). The question posed by Movants, namely, whether the Committee has jurisdiction over PSNH's Scrubber Project as a "sizeable addition" to PSNH's Merrimack Station electric generating facility, is just that, a request to rule on the

¹ As recently as March 13, 2009, in testimony before the New Hampshire Senate Energy, Environment and Economic Development Committee in opposition to Senate Bill 152, PSNH President and Chief Operating Officer Gary A. Long emphasized that if the Scrubber Project does not get built, Merrimack Station would be out of compliance with federal and state laws, which would lead to a shutdown of the plant.

² This is consistent with the definition of the term "declaratory ruling" contained in RSA 541-A:1, V., also relied upon by Movants, meaning an agency ruling "as to the specific applicability of any statutory provision . . .".

applicability of the Siting Law to a particular facility. As such, by statute and by rule, it can only be raised procedurally by a “petition,” not a motion for a declaratory ruling.³

4. A “petition,” in turn, may only be filed by a “Petitioner” meeting one or more of the conditions specified in RSA 162-H:2, XI, namely, 100 or more registered voters in the host community or communities, or abutting communities; the board of selectmen of the host community or 2 or more boards of selectmen of abutting communities; or the potential applicant for the project. *See also*, Site 102.14(a). Movants are none of the above. They do not own, operate or control Merrimack Station, and thus cannot be potential applicants for any project at Merrimack Station. Movants identify themselves as including “non-profit ratepayer and environmental organizations, merchant generators, and competitive energy suppliers operating in New Hampshire.” Motion for Declaratory Ruling, para. 4, p.3. There are no factual assertions that any one of the Movants meets any of the other definitions of a permissible “petitioner” under the applicable statute or rules. As none of the Movants qualifies as a “petitioner” legally allowed to “petition” the Commission to rule on the issue presented by the Movants in their motion, the Movants lack any legal standing to request the ruling they seek, and the motion must be dismissed outright on this basis.

B. The New Hampshire Scrubber Law Eliminates Any Requirement for the Committee to Make a Declaratory Ruling

5. In 2006, the New Hampshire Legislature enacted into law an act relative to the reduction of mercury emissions, RSA 125-O:11 through 125-O:18, inclusive (2006 N.H.

³ Moreover, under the Committee’s procedural rules, a “motion” means a request made “after the commencement of a contested proceeding”, Site 102.10, but no such contested proceeding exists. Thus, the specification of a “motion” for a declaratory ruling under Site 203.01 would be in direct conflict with the Siting Law and other provisions of the Committee’s own rules unless Site 203.01 was limited to matters for which a “motion” is appropriate under Site 102.10. It is also worth noting that Site 203.02(a) refers to a request for a declaratory ruling as a petition, not a motion.

Laws 105, generally, the “Scrubber Law”). By that law, the State of New Hampshire expressly found that installation of scrubber technology to control mercury emissions at PSNH’s Merrimack Station Units 1 and 2 “is in the public interest of the citizens of New Hampshire,” and imposed an unambiguous legislative mandate for PSNH to install and have operational such scrubber technology by no later than July 1, 2013. RSA 125-O:11, VI; 125-O:13, I. The “Statement of Purposes and Findings” contained in RSA 125-O:11 could not be more clear concerning the public interest findings underpinning the Scrubber Law:

I. 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. The requirements of this subdivision will prevent, at a minimum, 80 percent of the aggregated mercury content of the coal burned at these plants from being emitted into the air by no later than the year 2013. To accomplish this objective, the best known commercially available technology shall be installed at Merrimack Station no later than July 1, 2013.

II. The department of environmental services has determined that the best known commercially available technology is a wet flue gas desulphurization system, hereafter "scrubber technology," as it best balances the procurement, installation, operation, and plant efficiency costs with the projected reductions in mercury and other pollutants from the flue gas streams of Merrimack Units 1 and 2. Scrubber technology achieves significant emissions reduction benefits, including but not limited to, cost effective reductions in sulfur dioxide, sulfur trioxide, small particulate matter, and improved visibility (regional haze).

III. After scrubber technology is installed at Merrimack Station, and after a period of operation has reliably established a consistent level of mercury removal at or greater than 80 percent, the department will ensure through monitoring that that level of mercury removal is sustained, consistent with the proven operational capability of the system at Merrimack Station.

IV. To ensure that an ongoing and steadfast effort is made to implement practicable technological or operational solutions to achieve significant mercury reductions prior to the construction and operation of the scrubber technology at Merrimack Station, the owner of the affected coal-burning sources shall work to bring about such early reductions and shall be provided incentives to do so.

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.

VII. Notwithstanding the provisions of RSA 125-O:1, VI, the purchase of mercury credits or allowances to comply with the mercury reduction requirements of this subdivision or the sale of mercury credits or allowances earned under this subdivision is not in the public interest.

VIII. The mercury reduction requirements set forth in this subdivision represent a careful, thoughtful balancing of cost, benefits, and technological feasibility and therefore the requirements shall be viewed as an integrated strategy of non-severable components.

RSA 125-O:11 (emphases added).

6.. In compliance with the Scrubber Law's directive "to achieve significant reductions in mercury emissions at the coal-burning electric power plants in the state as soon as possible," PSNH has proceeded to design, engineer, permit, and is now constructing, the mandated scrubber technology facilities at Merrimack Station. This is **not** a voluntary project on PSNH's part; it is the installation of an emissions reduction system which PSNH is required by law to undertake to complete and operate as soon as possible in the public interest. As mandated in RSA 125-O:13, I.: "The owner [PSNH] **shall install and have operational** scrubber technology to control mercury emissions at Merrimack Units 1 and 2 no later than July 1, 2013." (emphasis added).

7. Any doubt as to the Legislature's intention that the Scrubber Project must be installed and made operational as Merrimack Station is dispelled by the use of the word "shall" in the Scrubber Law. The New Hampshire Supreme Court has repeatedly held that, as a matter of statutory interpretation, the use of the word "shall" is a mandatory directive, not a permissive one. As the Court noted in *McCarthy v. Wheeler*, 152 N.H. 643, 645 (2005), the "use of the word 'shall' is generally regarded as a command; although not

controlling, it is significant as indicating the intent that the statute is mandatory.” *See also, City of Rochester v. Corpening*, 153 N.H. 571 (2006) (as a general rule of statutory construction the word “may” makes enforcement of a statute permissive, while the word “shall” requires mandatory enforcement), and *In The Matter of Liquidation of Home Ins. Co.*, 157 N.H. 543 (2008) (by using the word “shall” Legislature is presumed to have intended mandatory rather than discretionary direction). Thus, under well settled legal principles of statutory interpretation, the Legislature’s use of the word “shall” in the Scrubber Law unambiguously requires PSNH’s installation of scrubber technology at Merrimack Station.⁴

8. Against the backdrop of this clear and unambiguous legislative public interest directive to PSNH that it **shall** proceed with the installation and operation of the Scrubber Project at Merrimack Station, the Movants now seek to raise the question of whether, in proceeding with the Project, PSNH has failed to comply with the Siting Law. Movants contend that, by not previously submitting to the Committee either an application for the Committee’s approval of the Scrubber Project, or a request for a determination that the Scrubber Project was not a “sizeable addition” to an existing facility subject to the Committee’s jurisdiction, PSNH has failed to abide by the law. They even have the temerity to suggest that the Committee consider penalizing PSNH for its transgressions. Motion for Declaratory Ruling, Conclusion, para. 12, p. 8.⁵

9. Movants prefer to characterize RSA 125-O:13, I, as merely “authorizing” PSNH to install scrubber technology at Merrimack Station, and rely for their position on the language

⁴ To leave no doubt as to its intention, the Legislature used the word “shall” SIXTY TIMES in the mercury reduction legislation.

⁵ Regrettably, there is no reciprocal provision to RSA 162-H:19 of the Scrubber Law which empowers the Committee to impose sanctions and costs upon persons without any legal standing, for the time and expense of Committee members, Committee staff, and other necessary participants, in having to address requests for Committee action or rulings by such persons which are meritless and obviously filed for reasons of delay or other motives.

of that statute requiring that “all necessary permits and approvals from federal, state and local regulatory agencies and bodies” be obtained. Motion for Declaratory Ruling, para. 11, p. 8. This provision of the Scrubber Law, Movants suggest, should include review and approval of the Scrubber Project by the Committee. There are a number of reasons why this contention is without merit and should be soundly rejected by the Committee.

10. The legislative command to PSNH proceed with the installation and operation of the Scrubber Project at Merrimack Station, and the statutory declaration that the Scrubber Project is in the public interest, eliminates any need or requirement for the Committee to engage in its own public interest review and approval of the siting of the same project. With respect to both energy facilities and bulk power facilities, the “Declaration of Purposes” section of the Siting Law makes very clear that the Committee’s purpose in reviewing and approving the siting of such facilities is imbued with the “public interest”:

I. The legislature recognizes that the selection of sites for energy facilities will have a significant impact upon the welfare of the population, the economic growth of the state and the environment of the state. The legislature, accordingly, **finds that the public interest requires** that it is essential to maintain a balance between the environment and the possible need for new energy facilities in New Hampshire; that undue delay in construction of any needed facilities be avoided; and that the state ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic and technical issues are resolved in an integrated fashion. The legislature, therefore, hereby establishes a procedure for the review, approval, monitoring and enforcement of compliance in the planning, siting, construction and operation of energy facilities. . . .

II. The legislature also finds that the present and predicted growth in electric power demands in the state of New Hampshire requires the development of a procedure for the selection and utilization of sites for electric generating facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites and the routing of associated transmission lines will have a significant impact upon the welfare of the population, the location and growth of industry, and the use of the natural resources of the state. The legislature, accordingly, **finds that the public interest requires** that it is essential to maintain a balance between the environment and the need for new power

sources; that electric power supplies must be constructed on a timely basis; that in order to avoid undue delay in construction of needed facilities and to provide full and timely consideration of environmental consequences, all entities planning to construct facilities in the state should be required to provide full and complete disclosure to the public of such plans; that a certifying body be established for the preconstruction review of high voltage transmission lines; that the siting of electric generating plants and high voltage transmission lines should be treated as a significant aspect of land-use planning in which all environmental, economic and technical issues should be resolved in an integrated fashion, so as to assure the state an adequate and reliable supply of electric power in conformance with sound environmental utilization. The legislature, therefore, hereby establishes a procedure for the planning, siting, and construction of large electric generating facilities and high voltage transmission lines.

RSA 162-H:1 (emphases added).⁶

The Scrubber Law's overriding mandate to install the Scrubber Project and that such installation is in the public interest obviates any need or requirement for a public interest siting determination by the Committee, and has removed it from the Committee's separate purview. The public interest determination has already been made by the Legislature. The Committee does not need to make -- and is legally precluded from making -- a determination that is contrary to that contained in binding statutory law.

11. When faced with a similar question, the New Hampshire Public Utilities Commission ruled that its pre-construction authority under RSA 369-B:3-a to determine whether a proposed modification to a PSNH generating asset such as Merrimack Station is in the public interest was superseded by the Legislature's more recent, more specific public interest finding in RSA 125-O:11 that scrubber technology should be installed at Merrimack

⁶ It is also important to note that when declaring the purpose of the Committee, the Legislature focused on "the selection of sites for energy facilities" and "the selection and utilization of sites for electric generating facilities . . ." As more fully explained in this Objection below, both legally and physically, there is no discretion concerning the selection of the site for the Scrubber Project.

Station, and the requirement in RSA 125-O:13, I, that PSNH install and operate it.⁷ NHPUC Order No. 24,898, September 19, 2008; NHPUC Order on Rehearing No. 24,914, November 12, 2008.⁸ In the Public Utilities Commission’s view, to conclude otherwise “would be nullifying the Legislature’s public interest finding and rendering it meaningless,” and would introduce unwarranted delay into a process for which the Legislature had made time of the essence, established deadlines for completion, and had provided “Economic Performance Incentives” that would flow to PSNH’s customers in the form of lower rates for accelerating emissions reductions. RSA 125-O:11; 125-O:13; 125-O:16. This reasoning is no less compelling in the context of the Committee’s public interest siting determinations under the Siting Law. Just as in the case of the approval authority of the Public Utilities Commission under RSA 369-B:3-a, the Committee’s approval authority under the Siting Law has been foreclosed by the public interest findings and directives contained in the Scrubber Law.

12. RSA 125-O:13, I, only requires that “necessary” permits and approvals be obtained. For the reason set forth above, the Committee’s approval under the Siting Law was not legally necessary, and was therefore not a “necessary” approval. Accordingly, PSNH was not obligated to file with the Committee any application or request for a determination of whether the Scrubber Project was a “sizeable addition” subject to Committee approval. The “necessary permits and approvals” referenced in the wording of RSA 125-O:13, I, obviously include needed land use, municipal, environmental and other construction permits and approvals related to the design, engineering and construction of the Scrubber Project, all of

⁷ A subset of the Movants on the instant motion challenged the jurisdictional ruling from the Public Utilities Commission, and are participating in an appeal of the Commission’s order to the New Hampshire Supreme Court.

⁸ The NHPUC decision regarding its authority over the scrubber has been appealed to the N.H. Supreme Court and is docketed as 2008-0897, *Appeal of Stonyfield Farm, Inc.*

which PSNH has been diligently pursuing since 2007 and has now secured.⁹ The Scrubber Law directs that scrubber technology must be installed, directs the precise “scrubber technology” (a wet flue gas desulphurization system) to be used, and directs who is to install it and where it is to be installed, but leaves to the federal, state and local permitting and approval agencies the details of its design, engineering and construction. Nevertheless, RSA 125-O:13, I, cautions that “all such regulatory agencies and bodies are encouraged to give due consideration to the general court’s finding that the installation and operation of scrubber technology at Merrimack Station is in the public interest,” underscoring the overriding determinant of the public interest. That public interest determination is binding on the Committee, and requires that the Committee refuse the Movants’ invitation to embark upon an entirely new and separate review of the Scrubber Project under the Siting Law.

C. Neither the Scrubber Project Nor the Turbine Replacement at PSNH’s Merrimack Station Constitute “Sizeable Additions” Subject to the Committee’s Jurisdiction

13. It is unnecessary to a ruling on the motion that the Committee should have to make any determination other than that it lacks jurisdiction over the Scrubber Project based on the clear legislative findings and mandates contained in the Scrubber Law. Assuming, without conceding that it should do so, that the Committee may nevertheless wish to consider argument on the substantive merits of the declaratory ruling sought by Movants, PSNH maintains that the Committee’s jurisdictional authority under RSA 162-H:5, I, over “sizeable additions” to existing facilities does not apply to either the Scrubber Project, or the capital improvements made by PSNH to replace the turbine at Merrimack Station’s Unit 2.

⁹ A comprehensive review of the federal, state and local construction permits and approvals obtained by PSNH for the installation and operation of the Scrubber Project is contained in section D. of this Objection.

14. Given that a fundamental purpose of the Siting Law is to establish a procedure to address the appropriate “selection and utilization of sites” and “the identification of a state position with respect to each proposed site” for electric generating facilities (RSA 162-H:1, II), it hardly makes common sense for the Committee to consider “sizeable additions” to existing electric generating facilities which do not also implicate a siting decision. The Committee’s principal function is siting approval, yet neither the Scrubber Project nor the turbine replacement projects implicate any siting decision by the Committee. The “state position” regarding the siting of the Scrubber Project has already been identified by the Scrubber Law. The Scrubber Law mandates installation and operation at a particular identified site -- at Merrimack Station. (RSA 125-O:13, I: “The owner shall install and have operational scrubber technology to control mercury emissions *at Merrimack Units 1 and 2* no later than July 1, 2013.”) Both projects are located at the existing site of Merrimack Station in Bow, a location where there has been a bulk power supply electric generating facility in continuous service since 1960, when Merrimack Unit 1 began commercial operation. Even more to the point, these two projects are so tied to the power plant, and so much an integral part of the plant itself, that there is literally no other siting option. In short, they cannot be put anywhere else than where they are -- at Merrimack Station. The turbine machinery is an internal and integral component of Unit 2 at Merrimack Station. The replacement of the existing turbine with a new, higher efficiency turbine obviously had no alternative but to be placed in the same location.¹⁰ Likewise, the Scrubber Project is a wet flue gas desulphurization system (the best known commercially available technology required to be installed under the Scrubber Law), all the components of which must be situated, literally

¹⁰ This project was actually completed by PSNH during the 2008 Merrimack Station maintenance outage, and Unit 2 is now operational with the new turbine in place.

(and legally per RSA 125-O:11 and 125-O:13), at the source of the flue gas streams produced by the operation of Merrimack Station Units 1 and 2 in order to effectively function to reduce flue gas mercury emissions. Neither project has been or will be constructed outside of the confines of the existing Merrimack Station site. There are no available alternative siting locations for either project, and thus there are no discretionary siting determinations for this Committee's consideration.

15. Movants suggest that, when compared against other projects which the Committee has determined not to be "sizeable additions" to existing electric generation facilities, the size, extent and cost of the Scrubber Project and the turbine replacement at Merrimack Station¹¹ make them subject to Committee jurisdiction. PSNH does not agree.

16. Notably, in their comparison of the Scrubber Project and turbine replacement to prior determinations by the Committee, the Movants have neglected to point out the filing made by Granite Ridge Energy, LLC, one of the very same Movants in this proceeding, in July, 2008, for a Committee determination of whether a new cold storage warehouse planned for construction at the Granite Ridge electric generating plant in Londonderry, New Hampshire, would qualify as a "sizeable addition" under RSA 162-H:5, I. *See*, Letter of Douglas L. Patch to Thomas S. Burack, Chairman NH Site Evaluation Committee, July 8, 2008 (copy attached hereto as Appendix A). In that filing, which is still pending and has not yet been ruled upon by the Committee, movant Granite Ridge Energy and its legal counsel¹²

¹¹ Although Movants have, for their own convenience, presented to the Committee the notion that the Scrubber Project and the Unit 2 turbine replacement are related as one large modifications project at Merrimack Station, they are in fact two separate and independent projects, but which share the commonality of location, and a variance under RSA 125-O:13, IV, of the Scrubber Law from the need for prior Public Utilities Commission approval of the turbine installation.

¹² Counsel for Granite Ridge Energy in that filing is also identified as counsel for Movant TransCanada Hydro Northeast Inc., and is a member of the same law firm identified as counsel for Movant Granite Ridge Energy, LLC.

have asserted that the proposed addition would not be a sizeable addition because it would “be an addition to an existing building **that is located on the land in Londonderry on which the generating facility and associated buildings and structures are located**” (emphasis added). According to Granite Ridge Energy’s own filing, the proposed addition “would not have any impact on the orderly development of the region in that **it would be done on the land that is already being used for the generating facility; it will not require any new land for this purpose and it will not significantly change how the existing lot is used**” (emphasis added). Under these criteria, the Scrubber Project and the Unit 2 turbine replacement at Merrimack Station are not “sizeable additions” either. Both of the PSNH projects are, by their very function, integral new components of the power plant facility itself, are sited on the same land and in the same location as the Merrimack Station generating facility and its associated buildings and structures, will not require any new land, and will not result in any change in the use of the Merrimack Station site for electric generation.

17. A review of previous Committee determinations on the subject of “sizeable additions” highlights a common and recurring factor, namely, that location of the proposed addition within the “confines” or “footprint” of the existing facility site is always a key factor in the Committee’s assessment of the reviewable impacts of a particular proposal. In finding that the PSNH wood burning conversion project at PSNH’s Schiller Station in Portsmouth did not amount to a sizeable addition, the Committee observed that “any and all construction necessary to the proposed conversion will occur within the confines of the existing site.” Motion for Declaratory Ruling, Attachment E-1 (emphasis added). Similarly, in finding that equipment modifications for a power output uprate at the Seabrook nuclear power plant

proposed by FPL Energy, LLC (“FPL”) did not constitute a sizeable addition, the Committee stated: “The Committee further understands that any and all construction necessary to the proposed upgrades will occur within the footprint of the presently existing facility. Thus, there will be no impact on the orderly development of the region, and there will be no unreasonable adverse impacts on aesthetic, historic sites, air and water quality, the natural environment or public health and safety.” Motion for Declaratory Ruling, Attachment D-2 (emphasis added).

18. More recently, in concluding that a project involving reliability upgrades to the 345kV transmission substation at the Seabrook nuclear power plant proposed by Florida Power & Light Company (“FP&L”) was not a sizeable addition, the Committee noted: “Among other things, the proposed upgrade project will occur entirely within the existing footprint of the Seabrook Substation and there should be no impact on the orderly development of the region”. *See*, Order Granting Motion for Declaratory Ruling Regarding Seabrook Transmission Substation Reliability Upgrade, SEC Docket No. 2008-05, December 17, 2008 (emphasis added) (copy attached hereto as Appendix B). This ruling by the Committee, which is adverse to the Movants position, has not been cited or disclosed to the Committee by the Movants at all in their motion.¹³ In FP&L’s Motion for a Declaratory Ruling filed in October, 2008, counsel for FP&L engages in a review of the Committee’s prior determinations in the Schiller and FPL Seabrook projects, and presents this conclusion: “The FPL Energy and PSNH cases show that the Committee has determined that a project involving construction within the existing footprint of a certificated facility or the confines of an existing site does not constitute a sizeable addition.” *See*, Motion for Declaratory Ruling

¹³ Counsel for FP&L was the same attorney who is now representing at least one of the Movants herein, and thus the Movants were obviously fully aware of the FP&L filing and determination.

of Florida Power & Light Company Regarding Transmission Station Reliability Upgrade, SEC Docket No. 2008-05, October 22, 2008 (emphasis added) (copy attached hereto as Appendix C). The PSNH Scrubber Project and turbine replacement project at Merrimack Station are just that -- projects involving construction within the existing footprint of Merrimack Station or within the confines of the Merrimack Station site in Bow. The fact is that the PSNH Scrubber Project and turbine replacement project share a key characteristic common to all of the prior electric generating plant projects which the Committee has determined were not sizeable additions, namely, their necessary location and installation at the site of the existing generating plant.

19. Movants attempt to otherwise differentiate the PSNH Scrubber Project and turbine replacement from other projects which the Committee has determined not to be sizeable additions. They contend that, in comparison to the FPL Seabrook power uprate and Schiller conversion projects, the Scrubber Project and/or the turbine replacement at Merrimack Station will enlarge the footprint of the plant, will cost significantly more, and will increase the generating capacity of Merrimack Station to such an extent that the Committee should find these projects to be sizeable additions. Again, PSNH does not agree.

20. The contention that the PSNH Merrimack Station projects will enlarge the footprint of the existing plant is certainly not the fact with the Unit 2 turbine replacement. Like the FPL Seabrook power uprate project which involved entirely the replacement of in-plant equipment (including a turbine), in this case the turbine replacement project involved the installation of a new and more efficient turbine to replace the aging and less efficient Unit 2 turbine. There has been no "addition" to the Merrimack Station plant, only a removal of

the Unit 2 turbine and its replacement with another turbine. No change in the “footprint” of the plant resulted from the turbine replacement.¹⁴

21. The PSNH Scrubber Project is more extensive, in that new buildings, structures and facilities must be installed at the Merrimack Station site as part of this pollution control system project. Movants contend that these additions will increase the size of the plant’s footprint “by some 40%,” but fail to note that these additions will still be installed entirely within the area and confines of the existing Merrimack Station site. In actual fact, in comparison to the approximate total buildings coverage area at the Merrimack Station site prior to installation of the Scrubber Project, the total buildings coverage area after installation of the Scrubber Project will represent only a 0.2% increase, or a change of from 1.2% to 1.4% in buildings area coverage, as a percentage of the approximate 13.35 million square feet of land area comprising the entire Merrimack Station site. This is not materially different from the affected area of the FP&L Seabrook transmission substation reliability upgrade project, a project which the Committee found did not constitute a “sizeable addition” because, among other factors, the work was to be performed in Seabrook’s switchyard area comprising “only 1.25% of the entire protected area within Seabrook Station.” Order Granting Motion For Declaratory Ruling Regarding Seabrook Transmission Substation Reliability Upgrade, Appendix B, at p. 5. The Movants’ comparison of the Schiller conversion project to the Scrubber Project ignores the reality that, like the Scrubber Project, the Schiller conversion project also involved the necessary installation of additional buildings, structures and facilities at Schiller Station as part of that project. A description of

¹⁴ The Committee should note that the Public Utilities Commission has held that PSNH has an obligation to perform efficiency projects, such as the turbine replacement, at its generating stations. NHPUC Order No. 24,893, September 15, 2008, Docket No. DE 06-061, Investigation Into Implementation of Standards in the Energy Policy Act of 2005.

these additional buildings, structures and facilities was presented to the Committee as part of the record prior to the Committee's determination that the Schiller project did not amount to a sizeable addition. These included not only the installation of a new boilerhouse building to house the new fluidized bed boiler unit, but also a new baghouse, new ductwork, a new induced draft building, a new wood ash silo and unloading area, emission control facilities, a new coal-crusher house and associated coal conveying equipment, a new chimney stack, and new wood storage and conveying facilities, including a wood storage building, a wood process building, truck scales and scale house, wood storage yard, unloading area and wood chip conveyor. PSNH estimates that the new buildings, structures and facilities at Schiller Station finally installed as part of the wood conversion project now comprise approximately 28% of the existing power plant facilities at Schiller Station.

22. In regard to the factor of project cost, the Committee has never found that a proposed project's cost, by itself, is a basis on which to conclude that the project is a "sizeable addition." As a stand-alone project, the approximate \$11.4 million cost of replacement of the Unit 2 turbine (which does not include a possible performance payment related to turbine efficiency) is far less than the estimated cost of the Schiller conversion project (\$70 million), or either one of the Seabrook projects (\$46 million, and between \$38 - \$44 million, respectively), none of which was found by the Committee to amount to sizeable additions. The projected cost of the Scrubber Project has now been estimated by PSNH at \$457 million, a cost which is being driven by a number of engineering and design, timing and economic factors, not the least of which is the mandate contained in the Scrubber Law that the "best known commercially available technology shall be installed at Merrimack Station no later than July 1, 2013." RSA 125-O:11, I. The Scrubber Law identifies a wet flue gas

desulphurization system as the scrubber technology which PSNH must install. RSA 125-O:11, II, and 125-O:12, V. PSNH does not have control over what it must install, and where and by when it must install it. Unlike other discretionary cost projects which the Committee has been asked to consider, the PSNH Scrubber Project at Merrimack Station is legally mandated in the public interest. Siting review by the Committee could cause significant delays with resulting increased costs for the Scrubber Project, and would not be in the public interest.

23. Finally, PSNH will not be increasing the generating capacity at Merrimack Station by any amount which should cause the Committee to consider either of the PSNH projects to be “sizeable additions.” As a stand-alone project, the Unit 2 High Pressure and Intermediate Pressure Turbine replacement resulted in the replacement of the existing turbine with a functionally equivalent, but more energy efficient turbine. As a result of the increased efficiency of the new turbine, PSNH has projected an estimated increase in generating capacity of Unit 2 (a with a current summer capacity of 320 MW) in the range of 6 to 13 MW, without any increased consumption of fuel. This represents a predicted percentage increase in generating capacity for Unit 2 of between 1.9% and 4.0%, or a percentage increase in the generating capacity of the total 432.5 MW combined summer capacity of Merrimack Station Units 1 and 2 of between only 1.4% and 3.0%. This is significantly less than the 102 MW -- or approximately 6.7% -- increase in Seabrook Station’s overall generating capacity resulting from the FPL Seabrook power uprate project, a project which the Committee has previously determined did not amount to a sizeable addition to that power plant facility. Motion for Declaratory Ruling, Attachments D-1 and D-2.

24. By contrast, the installation and operation of the Scrubber Project, by itself, will actually result in a decrease of the generating output of Merrimack Station by an estimated range of between 6 to 13 MW. This is because the operation of the many components of the scrubber technology which is being installed at Merrimack Station will consume power generated by the plant, a phenomenon commonly known as “parasitic load.” When these two projects are taken in sum, the result is that the increased MW output gained by the higher efficiency turbine replacement in Unit 2 may essentially be offset by approximately the equivalent power needs of the Scrubber Project, and there may be no net change in the generating capacity of Merrimack Station as a result of the completion of these two PSNH projects. The Scrubber Law, in RSA 125-O:13, IV, expressly authorizes PSNH to invest in capital improvements at Merrimack Station that increase its net MW power output capability, if the net MW power output of Merrimack Station is reduced due to the power consumption or operational inefficiencies of the installed scrubber technology. When the two PSNH projects are considered in terms of their net effect on the generation capacity of Merrimack Station, the result should be the same as the Committee’s previous conclusions on the Schiller and Seabrook projects. Neither of the PSNH projects will result in an increase in generating capacity sufficient to classify them as “sizeable additions” to Merrimack Station.

25. Movants contend that a January 31, 2009 ISO-New England (“ISO-NE”) list of Interconnection Requests suggests PSNH could be increasing capacity at Merrimack Station by an amount “as great as 28 MW.” No explanation is provided for this statement. In fact, PSNH did file and currently has pending with ISO-NE an interconnection request related to the turbine replacement at Merrimack Station Unit 2.¹⁵ However, that submittal does not

¹⁵ Under ISO-NE rules, any new or added generation, whether in the form of a new generating plant or an upgrade in generating capacity of a unit, must be filed with ISO-NE for an

request or suggest a 28 MW increase in generation capacity for Merrimack Station. PSNH's ISO-NE filing has sought interconnection approval for a maximum increase of 17.175 MW, which includes the generating capacity increase of up to 13 MW projected from the new turbine efficiencies referred to above, plus a potential increase of up to 4.175 additional MW which could be realized from the new turbine if additional potential efficiencies are achieved. There is no certainty that this additional MW capacity can or will be achieved. Nevertheless, it was appropriate for PSNH in its ISO-NE filing to request interconnection approval for the potential maximum increase in generating capacity which might be achieved from the turbine upgrade, to insure that its customers will receive the full benefit of the increased generation capacity.¹⁶

D. The Objectives of Committee Review and Approval Under the Siting Law Have Already Been Met By Federal, State and Local Permitting of the Scrubber Project

26. Under the Siting Law, the Committee is delegated the responsibility to satisfy the public interest objectives of RSA 162-H:1 with respect to jurisdictional projects by the comprehensive and integrated review and consideration of a number of factors. Among others, these include consideration and incorporation of the terms and conditions of other state agencies having specific permitting authority over some aspect of the project, and a review of environmental impacts of the project to determine whether the project will have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural

interconnection study and approval of the impact on operation and reliability of the transmission system.

¹⁶ Even if a maximum 17.175 MW increase in Unit 2 generation capacity was actually achieved, this would only represent a 5.4 % increase in the current summer capacity of Unit 2, or a 3.9% increase in the combined summer capacity of Merrimack Station Units 1 and 2, which is still less than the 6.7% increase in generating capacity of the FPL Seabrook power uprate project which the Committee determined was not a "sizeable addition". This is without factoring in the 6 to 13 MW decrease in Merrimack Station's generation capacity which will result from eventual operation of the scrubber.

environment, and public health and safety. Obviously mindful of these factors, in its previous determinations in regard to the question of “sizeable additions” in connection with the Schiller Station and Seabrook projects, the Committee has consistently inquired of and sought assurances from the applicant regarding the applicant’s intent to secure applicable federal, state and local regulatory approvals relating to the project’s construction and operation. The Committee’s letter determinations issued in connection with the PSNH Schiller wood conversion project and the FPL Seabrook power uprate project each contained specific cautions to the applicants not to consider the Committee’s determinations as relieving the applicant from the responsibility to obtain all needed federal, state and local permits and approvals. The Committee’s order issued in connection with the FP&L Seabrook transmission substation project was specifically conditioned upon the applicant filing with the Committee documentary proof that various federal, state and local permits had been either obtained or waived. *See*, Motion for Declaratory Rule, Attachments D-2 and E-1, and Order Granting Motion for Declaratory Ruling Regarding Seabrook Transmission Substation Reliability Upgrade, Appendix B, at p. 5, 6.

27. In accordance with the mandates of RSA 125-O:13, I, that PSNH install and have operational scrubber technology to control mercury emissions at Merrimack Station Units 1 and 2 no later than July 1, 2013, and that it obtain “all necessary permits and approvals from federal, state and local regulatory agencies and bodies,” PSNH proceeded to apply for and has already obtained all permits and approvals needed to commence construction. Construction of the Scrubber Project is now underway in accordance with those permits and approvals. Commencing with PSNH’s filing of the necessary application for a NHDES air permit in June, 2007, the Scrubber Project has over the past more than 1½

years undergone myriad permitting reviews and approvals by various federal, state and local agencies and regulatory bodies having jurisdiction over the project's design, construction and operation. As a result, separate review and approval of the Scrubber Project by this Committee would be duplicative and is unnecessary to protect the public interest.

28. A summary of the necessary federal permits and approvals which have been obtained by PSNH for the Scrubber Project includes the following:

(a) U.S. Army Corps of Engineers ("ACOE"): Approval of dredge and fill in wetlands under ACOE New Hampshire Programmatic General Permit, in coordination with NHDES Wetlands Bureau dredge and fill permit issued December 31, 2008.

(b) U.S. Environmental Protection Agency ("EPA"): Authorization for stormwater discharges associated with Scrubber Project construction activities pursuant to National Pollutant Discharge Elimination System (NPDES) Construction General Permit, by the filing on November 5, 2008, of a Notice of Intent under PSNH's existing NPDES permit.

(c) Federal Aviation Administration ("FAA"): Issuance on November 24, 2008, of Determination of No Hazard to Air Navigation pertaining to the height of the new flue gas desulphurization system chimney.

(d) FAA: Issuance on November 24, 2008, of Temporary Determinations of No Hazard to Air Navigation pertaining to eleven separate temporary construction crane locations in connection with construction of the Scrubber Project.

29. A summary of the necessary state permits and approvals which have been obtained by PSNH for the Scrubber Project includes the following:

(a) NHDES, Subsurface Systems Bureau: September 9, 2008, Approval for Construction for Scrubber Project Guardhouse Station septic system.

(b) NHDES: Approval on October 22, 2008, of exemption for vested rights under the Comprehensive Shoreland Protection Act for any shoreland impacts associated with the Scrubber Project.

(c) NHDES: Issuance on November 13, 2008, of Alteration of Terrain Permit WPS-8261 for Scrubber Project Phase 1 construction activities.

(d) NHDES: Subsurface Systems Bureau: November 21, 2008, Approval for Construction for Scrubber Project North Septic System.

(e) NHDES, Wetlands Bureau: Approval on December 31, 2008, of dredge and fill permit for permanent and temporary wetlands impacts associated with construction of the Scrubber Project. Mitigation requirements associated with the issuance of this permit to PSNH included that PSNH make a one time payment of \$78,157.28 to the NHDES Aquatic Resources Mitigation Fund, PSNH convey to the Town of Bow Conservation Commission a permanent conservation easement on 10.3 acres of PSNH-owned land at the Merrimack Station site, and PSNH contribute to efforts to preserve and enhance potential habitat for the New England Cottontail rabbit species. PSNH has made the mitigation payment, conveyed the required easement, and has met with, and committed to work with, the New Hampshire Fish & Game Department on certain collaborative efforts to support and enhance New England Cottontail habitat.

(f) NHDES: Issuance on February 23, 2009, of Alteration of Terrain Permit WPS-8256 for Scrubber Project Phase 2 construction activities.

(g) NHDES, Air Resources Division: Temporary Permit No. TP-0008 issued March 9, 2009, for air emissions associated with the operation of the flue gas desulphurization system to be installed by PSNH at Merrimack Station.

(h) NHDES, Subsurface Systems Bureau: March 16, 2009, Approval for Construction for Scrubber Project South Septic System.

30. Local approvals for the Scrubber Project involved many meetings and discussions with the Town of Bow Community Development and Code Enforcement & Building Departments, the filing of multiple applications for various Town required permits and approvals, and a number of public hearings before the Town Conservation Commission, the Town Planning Board, the Town Board of Selectmen, and the Town Zoning Board of Adjustment. Project engineering and design, local environmental and land use planning issues were all duly considered and reviewed (including independent peer review by Town engineering consultants) in the course of these proceedings before the Town, including issues related to noise, traffic impacts, content and visibility of the chimney plume, aquifer and wetland protection measures, on-site storage and handling of materials and waste, and other similar matters. Both the Town Zoning Board of Adjustment and Planning Board determined the PSNH Scrubber Project to be a “development of regional impact” under the provisions of RSA 36:54 – 36:58. This determination resulted in legally required notice of the Scrubber Project and its review by the Town of Bow being given to a number of abutting communities presumed to be potentially impacted by the Project, including the Towns of Hooksett, Allenstown and Pembroke, and to the Central and Southern New Hampshire Regional Planning Commissions, with opportunity for comment on the Project. PSNH provided informational briefings on the Scrubber Project to both Regional Planning Commissions, and to each of the abutting Towns. As a result of these extensive and intensive local permitting efforts, PSNH has secured the following local regulatory permits and approvals from the Town of Bow:

(a) Zoning Board of Adjustment: Granted on June 17, 2008, two zoning variances and two special exceptions for construction of structures greater than 40' in height associated with the PSNH Scrubber Project (limestone storage silo, flue gas desulphurization building, waste water treatment building, and gypsum storage building).

(b) Planning Board: Granted on October 2, 2008, partial site plan review approval, aquifer protection conditional use permit, and wetlands protection conditional use permit for construction of preparation phase (Phase 1) facilities associated with the PSNH Scrubber Project, and related requested waivers (north access road, plant entrance and guard house, lay-down area and guard house, contractor parking area, pedestrian bridge, construction management area, substation access road, and chimney staging and fabrication area).

(c) Planning Board: Granted on February 19, 2009, final site plan review approval, aquifer protection conditional use permit, and wetlands protection conditional use permit for construction of Phase 2 facilities associated with the PSNH Scrubber Project, and related requested waivers (flue gas desulphurization building including chimney and associated outdoor storage tanks, duct work, gypsum storage building and outdoor gypsum stockpile, wastewater treatment building and associated outdoor storage tanks, two limestone silos, service water building, roadway improvements at the rear of Unit 2, limestone conveyors, and related conveyance and electric transmission structures and facilities).

(d) Zoning Board of Adjustment: Granted on March 16, 2009, zoning variance for construction of additional limestone silo greater than 40' in height associated with the PSNH Scrubber Project.

(e) Code Enforcement and Building Department: Issuance in February and March, 2009, of building permits for foundation for temporary fabrication enclosure, chimney

foundation, foundation for absorber vessel, and foundation for flue gas desulphurization building. Other local building permits will be obtained as construction proceeds.

31. As is evident from the foregoing summaries, the federal, state and local permitting reviews of the Scrubber Project have been extensive and comprehensive. The public interest objectives of Committee review under RSA 162-H:1, II -- the full and timely consideration of environmental consequences, full and complete disclosure to the public, treatment as a significant aspect of land-use planning in which all environmental, economic and technical issues are resolved in an integrated fashion -- have already been accomplished through these rigorous permit and approval processes. The Committee should therefore firmly reject jurisdiction of the Scrubber Project at Merrimack Station.

Conclusion

32. The Movants do not have legal standing to request a jurisdictional determination by the Committee regarding the Scrubber Project or the Unit 2 turbine replacement at PSNH's Merrimack Station. Every prior project where the Committee has been asked to consider the question of "sizeable additions" to an existing facility has been put before the Committee by the facility owner and operator, as the proponent of the project. Movants do not own or operate Merrimack Station. A declaratory ruling of the kind sought by Movants may only be legally brought by petition, not by a motion. Movants do not fall within any category of a "petitioner" legally entitled under the Siting Law to "petition" the Committee to determine the applicability of the Siting Law to a particular project. Accordingly, the Movants' motion should be dismissed on this basis alone.

33. Alternatively, should the Committee decide that the Movants have sufficient standing to seek a declaratory ruling, the motion should be denied and dismissed in any event

because review of the Scrubber Project by this Committee has been precluded by Legislative mandate. That mandate is embodied in the recent and specific provisions of the Scrubber Law, which expressly finds that installation of scrubber technology to reduce mercury emissions at Merrimack Station is in the public interest of the citizens of New Hampshire, and directs the installation and operation by PSNH of scrubber technology at Merrimack Station Units 1 and 2 by no later than July 1, 2013. The Scrubber Law dictates the siting decision by mandating what must be installed, where it must be installed, and when it must be in operation. Review and approval of the Scrubber Project by the Committee was not legally necessary or required, and therefore PSNH had no obligation under the Siting Law to pursue any jurisdictional determination from the Committee.

34. Furthermore, when the PSNH Merrimack Unit 2 turbine replacement project and the PSNH Scrubber Project are compared against the factors previously considered by the Committee on other electric generating station projects which the Committee has found not to constitute “sizeable additions” to an existing facility, the clear conclusion is that these PSNH projects do not constitute “sizeable additions” under the Committee’s jurisdiction either. Federal, state and local permitting of the engineering, design and construction of the Scrubber Project has been extensive, comprehensive, and completed to the point that it is unnecessary for the Committee to undertake any new and separate review of the Project for any reasons related to the public interest or the objectives of siting review by the Committee under the Siting Law.

35. Installation of the turbine replacement project at Merrimack Unit 2 has been completed, and the new, more energy efficient turbine is in service. Installation and construction of the legally mandated Scrubber Project at Merrimack Station is underway, in

accordance with design, engineering and construction permits and approvals which have been properly obtained. The Scrubber Project is an environmentally beneficial pollution control system project, which will reduce flue gas mercury emissions and other pollutants such as sulfur dioxide at Merrimack Station. The Scrubber Law clearly expresses the Legislature's directive that 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 (emphasis added). Delay is not an option. In April 11, 2006, public testimony before the New Hampshire Senate Committee on Energy and Economic Development on House Bill 1673, which later was enacted as the Scrubber Law, Robert R. Scott, Director of the NHDES Air Resources Division and one of the drafters of the Scrubber Law, stated the following in explaining why the drafters believed it important to avoid unnecessary delay in getting scrubber technology installed:

"Everybody, including myself I think agrees that we want to see mercury reductions, a high level of mercury reductions sooner than later. We know today that the installation of scrubbers which have a wonderful benefit of SO₂ reductions, also reduce mercury at a high percentage. That is today the best technology, especially taking into account the multi-pollutant benefits that we know of. What we wanted to avoid is extra time being given, another year, two years of a selection process, what's the best technology, the owner's having to go to PUC to convince them that this is the best technology, and then perhaps have some other company come in and say, "Well, I had this new alchemy and I can do something even better." That's all fine and dandy, but what we're concerned about is we don't want to have this as a method where we're constantly delaying the installation. By calling out scrubber technology in the bill, we're signaling PSNH from the word go to start to engineer, design and build scrubber technology right away."

Transcript of Hearing Before Senate Committee on Energy and Economic Development on HB 1673-FN, April 11, 2006, p. 33.

36. Given the mandates of the Scrubber Law, the lack of any merit to the request for a declaratory ruling which is now before the Committee, and the comprehensive construction permitting which has already been completed, PSNH believes that the Committee has a

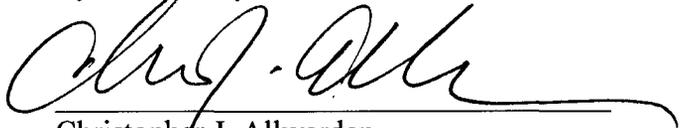
public interest obligation to rule against the Movants' motion and dismiss it outright. The Siting Law states as one of its principal objectives the avoidance of "undue delay in construction of needed facilities." RSA 162-H:1, II. Consistent with this objective and the public interest, the Committee should promptly deny and dismiss the Movants' Motion for Declaratory Ruling without the need of any further proceedings in this matter.

WHEREFORE, PSNH respectfully requests that the Motion for Declaratory Ruling Regarding Modifications to Merrimack Station Electric Generating Facility in Bow be denied and dismissed for the reasons and on the grounds set forth in this Objection.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE

By its Attorney

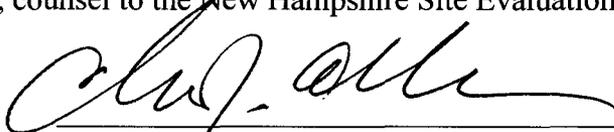


Christopher J. Allwarden
Senior Counsel, Legal Department
Energy Park
780 North Commercial Street
Manchester, NH 03101
603-634-2459

Dated: 4/1, 2009.

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that on 4/1, 2009, a copy of the within Objection of Public Service Company of New Hampshire was mailed by first class U.S. Mail, postage prepaid, to Patrick J. Arnold, Campaign for Ratepayers Rights; Kristen E. Kraushaar, Esq., Conservation Law Foundation; N. Jonathan Peress, Esq., of Downs Rachlin Martin, for Freedom Logistics LLC and Halifax-American Energy Co., LLC; Douglas L. Patch, Esq., of Orr & Reno, for TransCanada Hydro Northeast Inc.; Jim Rubens, Union of Concerned Scientists; Howard M. Moffett, Esq., of Orr & Reno, for Granite Ridge Energy, LLC; the Office of the Attorney General of New Hampshire, and to Michael J. Iacopino, Esq, of Brennan, Caron, Lenahan & Iacopino, counsel to the New Hampshire Site Evaluation Committee.



Christopher J. Allwarden

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Jane

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NH DEPT. OF
ENVIRONMENTAL SERVICES

JUL 09 2008

RECEIVED

July 8, 2008

Thomas S. Burack, Commissioner
Department of Environmental Services
Chairman, New Hampshire Site Evaluation Committee
P.O. Box 95
29 Hazen Drive
Concord, NH 03302-0095

VIA HAND DELIVERY

Re: Addition to Granite Ridge Energy, LLC Facility in Londonderry

Dear Chairman Burack:

I am writing to you on behalf of Granite Ridge Energy, LLC ("GRE") to ask the Site Evaluation Committee ("the Committee") to determine whether an addition to a building at the site of the existing and previously certificated (SEC Docket No. 98-02) gas-fired electric generating station in Londonderry would constitute a "sizeable addition", thereby requiring a separate certificate from the Committee under RSA 162-H:5,I. For the reasons provided in more detail below, GRE submits that this addition should not require GRE to file an application and obtain the Committee's approval to construct this addition.

GRE is planning to construct a cold storage warehouse for spare parts as an addition to an existing structure. The foundation for this addition would be approximately 52 feet by 55 feet, for a total floor space of 2,750 square feet. Enclosed is a copy of a plot plan and a conceptual drawing of the proposed addition. As you can see from this information, this structure would be an addition to an existing building that is located on the land in Londonderry on which the generating facility and associated buildings and structures are located.

RSA 162-H:5,I requires a certificate for "sizeable additions" to existing facilities that are already certificated, though there is no further definition of "sizeable" in the law or rules. The only guidance we could find on this issue is in two sets of correspondence between the Committee and the owners of other previously certificated facilities who were seeking approval to make modifications to their facilities. In June of 2003, FPL Energy Seabrook sought a ruling

Thomas S. Burack, Chairman
July 8, 2008
Page 2

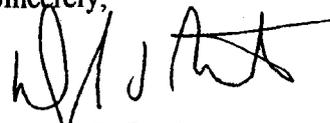
from the Committee on whether the modifications to the plant to accomplish a 6.7% increase in the output of the plant would constitute a sizeable addition by making what it referred to as "minor in-plant modifications and certain equipment changes" to increase the output. In the January 26, 2004 letter indicating that its approval was not required, the Committee noted that all construction necessary to the proposed upgrade would occur within the footprint of the existing facility and that it would not have any impact on the orderly development of the region and there would be no adverse impacts on aesthetics, historic sites, air and water quality, the natural environment or public health and safety. Similarly, in 2004 when PSNH wanted to replace one of its coal-fired electric generating units at the Schiller Generating Station in Portsmouth with a wood-fired unit, the Committee determined that it was not a sizeable addition that triggered the Committee's jurisdiction.

The proposed GRE addition would not have any impact on the orderly development of the region in that it would be done on the land that is already being used for the generating facility; it will not require any new land for this purpose and it will not significantly change how the existing lot is used. Moreover, there would be no adverse impacts on aesthetics, historic sites, air and water quality, the natural environment or public health and safety. As the proposed addition will only be used as a cold storage for spare parts and will be constructed as an add on to an existing structure, it will not have any such adverse impacts. Given these facts, GRE believes that this is not a sizeable addition that the Legislature intended to have subject to a full review by the Committee. From our examination of the prior situations where the Committee has addressed similar requests, we believe it would be consistent with precedent established by the Committee to determine that this addition does not require a certificate from the Committee.

Although GRE believes the proposed structure is not a "sizeable addition" within the meaning of the statute, we are submitting this question out of an abundance of caution in light of the provisions in the law making it illegal to construct a facility without the Committee's approval, RSA 162-H:5,I, and defining what constitutes commencement of construction in RSA 162-H:2,III.

Please let me know if you or the Committee require any further information.

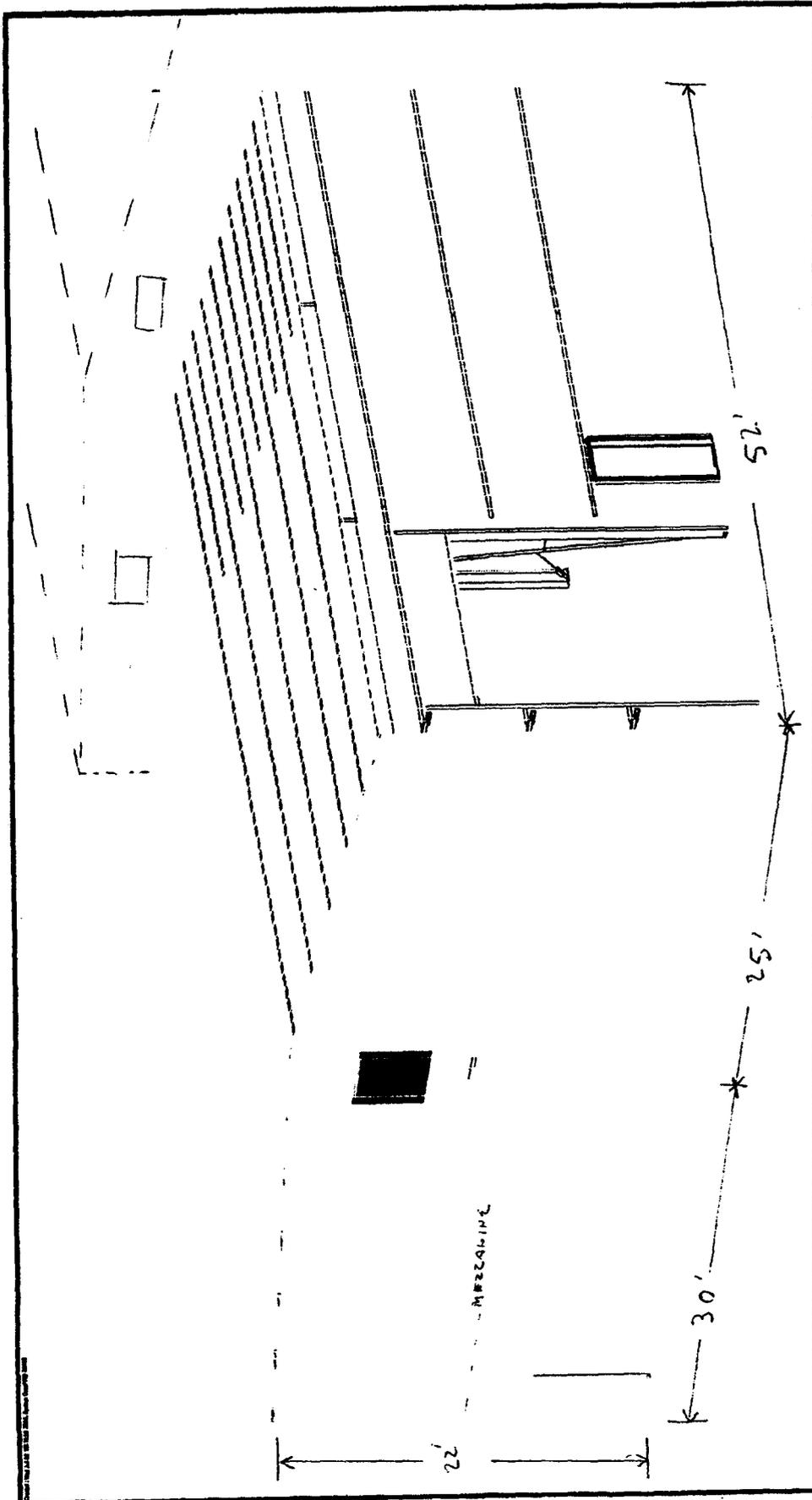
Sincerely,



Douglas L. Patch

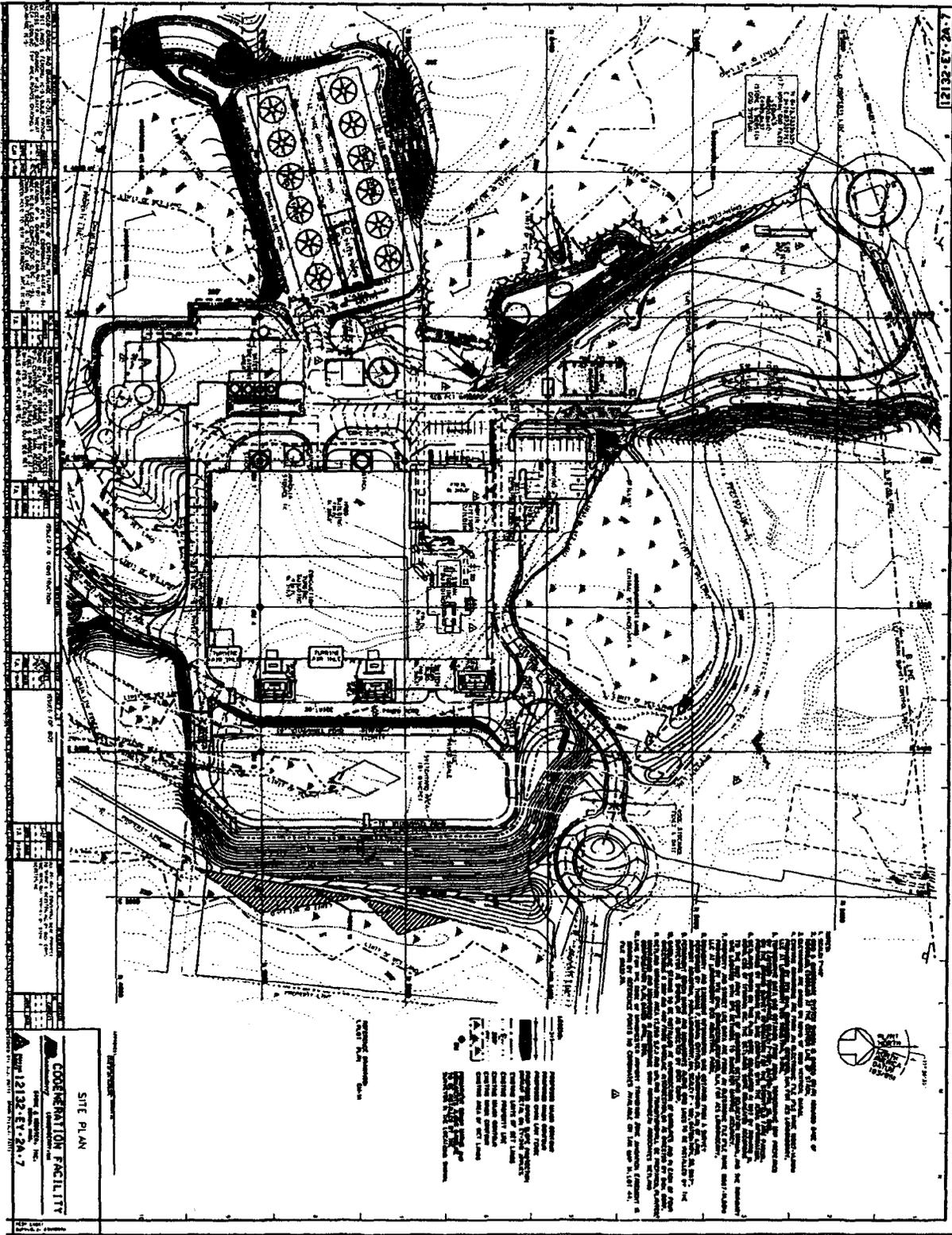
cc: Thomas B. Getz, Vice Chairman, NH Site Evaluation Committee
Michael J. Iacopino, Esq.
James Carlton, GRE

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3D FRONT LEFT - (B) ADDITION BLDG

 Coop Building Systems 10000 Cooper Street Suite 200 Dallas, Texas 75242 Phone: (214) 343-1111 Fax: (214) 343-1112 Email: info@coopbuilding.com		MEMA MEMBERSHIP IN MANUFACTURING
PROJECT NO. _____ DATE _____ DRAWN BY _____ CHECKED BY _____	SHEET NO. _____ TOTAL SHEETS _____ SCALE _____ PROJECT NAME _____	PROJECT LOCATION _____ PROJECT DESCRIPTION _____ PROJECT OWNER _____ PROJECT MANAGER _____



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SITE PLAN
COGENERATION FACILITY
 12132-ET-2A-7

- 1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
- 2. THE FACILITY IS TO BE CONSTRUCTED ON THE LAND SHOWN ON THIS PLAN.
- 3. THE FACILITY IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE SPECIFICATIONS SET FORTH IN THE ATTACHED SPECIFICATIONS.
- 4. THE FACILITY IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE REGULATIONS OF THE LOCAL, STATE AND FEDERAL GOVERNMENTS.
- 5. THE FACILITY IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE REGULATIONS OF THE LOCAL, STATE AND FEDERAL GOVERNMENTS.
- 6. THE FACILITY IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE REGULATIONS OF THE LOCAL, STATE AND FEDERAL GOVERNMENTS.
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- 10. THE FACILITY IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE REGULATIONS OF THE LOCAL, STATE AND FEDERAL GOVERNMENTS.



12132-ET-2A-7

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

DOCKET NO. 2008-05

Re: MOTION OF FLORIDA POWER & LIGHT COMPANY FOR A DECLARATORY
RULING REGARDING THE PROPOSED RELIABILITY UPGRADE OF THE
SEABROOK TRANSMISSION SUBSTATION

Order Granting Motion For Declaratory Ruling Regarding
Seabrook Transmission Substation Reliability Upgrade

Background

On October 22, 2008, Florida Power & Light Company (FP&L) filed a motion seeking a declaratory ruling from the Site Evaluation Committee (Committee) pursuant to New Hampshire Code of Administrative Regulations, Site 203.01. The motion requests that the Committee determine that FP&L's planned reliability upgrades to its 345 kV transmission substation located in Seabrook, Rockingham County, do not constitute a sizeable addition to the facility, and do not require a Certificate of Site and Facility pursuant to R.S.A. 162-H: 5. On December 1, 2008, the Committee reviewed and considered the relief requested in the motion.

The Proposed Project

FP&L proposes to upgrade its 345kV transmission substation (Substation) located adjacent to the Seabrook Station nuclear power plant in Seabrook. The Substation interconnects the Seabrook Station nuclear power plant with the New England electric grid. At 1,318 MW, Seabrook Station is the largest single electric generation facility in New England. The Substation is a pool transmission facility that serves to connect three major 345kV transmission lines: the Seabrook to Ward Hill/Tewksbury 394 line; the Seabrook to Scobie 363 line; and the Seabrook to Timber

Swamp/Newington 369 line. The Substation plays an integral role in the North-South and Northern New England electrical interfaces. The Substation plays a critical role in the transmission of electricity throughout the region.

FP&L represents that the proposed upgrade is scheduled to take place entirely within the existing footprint of the Substation and is not projected to result in any increase in voltage carried by the transmission facilities. The Substation is located within the protected area of the Seabrook Station nuclear power plant in an area that is commonly referred to as the "switchyard." As part of the proposed upgrade, the reserve auxiliary transformers presently located at the Substation will be relocated to connect to a dedicated terminal position. The existing generator step-up transformer connections will also be relocated from the current position where they share a breaker and a half bay with the Seabrook-Scobie 363 line to a dedicated double breaker bay. Five new gas insulated substation breakers will be installed: two will be replacements for existing breakers, and three will be new breakers. A new substation structure also will be constructed which will have a roofline slightly higher than the existing substation structure, though lower than adjacent structures. FP&L estimates the cost of the reliability upgrade project to be between Thirty-Eight Million Dollars (\$38,000,000.00) and Forty-Four Million Dollars (\$44,000,000.00). FP&L hopes to commence construction on this project by March 1, 2009 so that construction will coincide with scheduled outages of the Seabrook Station nuclear power facility.

In its Motion, FP&L represents that the proposed upgrade project implicates relatively few regulatory permits or licenses. FP&L asserts that the proposed project will operate under a general construction permit from the United States Environmental

Protection Agency (EPA) under the National Pollutant Discharge Elimination System (NPDES) for storm-water discharges and dewatering activity discharges. The proposed upgrade does not require an individual NPDES permit. FP&L need only file a notice with EPA Region I and comply with the standard regulations that accompany the general construction permit. The proposed upgrade will require a certification of financing for the New Hampshire Public Utilities Commission (PUC) that complies with RSA 374-A:7, II (c) and a waiver from PUC reporting requirements for capital improvements in excess of \$100,000.00. FP&L also represents that it will obtain a building permit from the Town of Seabrook and approval of the independent system operator, ISO-New England (ISO-NE).

FP&L represents that the project does not require a waiver from the New Hampshire Department of Environmental Services (DES) under the Comprehensive Shoreland Protection Act (CSPA), RSA 483-B, because the proposed upgrade will not create additional impervious surfaces within 250 feet of the shoreland protection zone. Similarly, because the proposed upgrade is located outside of the 100-foot upland tidal buffer zone, FP&L asserts that a DES Wetlands Permit is not required. FP&L also represents that a DES Alteration of Terrain Permit is not required because the project is not expected to involve excavation or earth movement with an impact greater than 50,000 square feet. Finally, FP&L represents that the project does not require permits or authorizations from the United States Army Corps of Engineers. FP&L did not file documentation of the foregoing with its motion or at the time of hearing.

The Hearing

A hearing was held on the Motion on December 1, 2008. The hearing was held subsequent to the publication of an Order and Notice of Public Meeting in the Manchester Union Leader on November 10, 2008, and in the Portsmouth Herald on November 11, 2008. The Order and Notice of Public Meeting advised that the Committee may deliberate and rule on the merits of the Motion or order further review.

At the hearing on December 1, 2008, the Applicant made a presentation to the Committee that included the reasons for the proposed upgrade to the Substation, an overview of the expected construction and legal argument as to why the proposed upgrade does not qualify as a sizeable addition under RSA 162-H:5. Although the public was invited to attend, no member of the public sought to speak at the hearing.

Analysis

RSA 162-H:5 prohibits the construction of energy facilities and bulk power facilities without a Certificate of Site and Facility. A Certificate is also required for sizeable additions to existing facilities. However, the statute does not define a "sizeable addition". See, RSA 162-H:5. Nonetheless, the representations made by FP&L satisfy the Committee that the proposed upgrade project is not a sizeable addition requiring a new Certificate pursuant to RSA 162-H:5. Among other things, the proposed upgrade project will occur entirely within the existing footprint of the Seabrook Substation and there should be no impact on the orderly development of the region. Likewise, for the reasons described below, there should be no incremental adverse impacts on aesthetics, historic sites, air quality, water quality, the natural environment or public health and safety. The upgrade project, as proposed by FP&L,

involves the replacement and/or re-alignment of existing substation structure and equipment and will not increase the overall voltage or power transmitted through the facility. The size and appearance of the facility will remain roughly as it exists now with the single exception that the substation roof structure will be somewhat higher than the existing roof; however, the roofline will remain below the nearby buildings that house Turbine Unit 1 and the heater bay. Furthermore, the new structure is not likely to be visible to the public.

The cost of the reliability upgrade project as estimated (\$38,000,000.00 to \$44,000,000.00) represents less than one percent (1%) of the initial cost to construct Seabrook Station. The work to be performed will occur in the switchyard area. The switchyard area comprises only 1.25% of the entire protected area within Seabrook Station. For all of these reasons, the Committee finds that the proposed upgrade project does not constitute a "sizeable addition" requiring a new Certificate of Site and Facility and we will therefore GRANT the Motion for Declaratory Ruling filed by FP&L with the specific conditions set forth below.

Our ruling herein is based upon the representations of FP&L as contained in its motion. The motion did not contain supporting documentation. This Order is specifically conditioned on the filing by FP&L of the following documents:

- Notice of Intent Under NPDES Construction General Permit
- PUC financing certifications and waivers
- Town of Seabrook Building Permit
- ISO-NE approval

- Documentation from DES that a Shoreland Protection Act waiver is not necessary
- Documentation from DES that a Wetlands Permit is not necessary
- Documentation from DES that an Alteration of Terrain Permit is not necessary
- Documentation from the United States Army Corps of Engineers that no permits or licenses are required from that agency.

Copies of each document shall be filed with the Committee and a copy shall be provided to Counsel to the Committee. Counsel to the Committee shall certify to the Committee when all of the documents have been received. Construction may commence, without further order, after Counsel to the Committee has certified receipt. If further study or evidence reveals that the proposed upgrade project is broader in scope than represented, requires additional state or federal permits or if circumstances change substantially, the Committee may require compliance with the certification requirements of RSA 162-H. Additionally, this Order applies only to the specific project referenced within the motion and does not apply to any other project or construction at or near the Substation.

FP&L has also filed a Motion for Protective Order and Confidential Treatment. This Motion pertains to Exhibit B attached to the Motion for Declaratory Ruling and to the two photographs submitted at the hearing. The photographs depict the existing facility as well as the Substation with a three dimensional overlay that demonstrates the proposed construction. FP&L is justifiably concerned about public access to the photographs because public access increases security concerns due to the proximity

of this important infrastructure asset to the Seabrook Station nuclear power facility. These security concerns render the photographs to be commercially sensitive documents that fall within the definition of "commercial information" contained in RSA 91-A:5, VI. The Committee finds that the public interest in disclosure of these commercially sensitive documents is outweighed by the security concerns that pertain to essential electric grid infrastructure that sits in close proximity to a nuclear power plant. Therefore, we will GRANT the Motion for Protective Order and Confidential Treatment.

IT IS HEREBY ORDERED that the Motion for a Declaratory Ruling by Florida Power & Light Company Regarding the Seabrook Substation Reliability Upgrade is GRANTED subject to the filing of the documents referenced in this Order; and,

IT IS FURTHER ORDERED that the Seabrook Substation Reliability Upgrade as described in said Motion is not a sizeable addition to the facility and does not require a Certificate of Site and Facility pursuant to RSA 162-H:5; and,

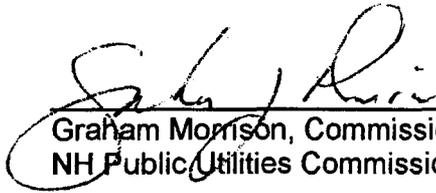
IT IS FURTHER ORDERED that the Motion of Florida Power & Light Company for a Protective Order and Confidential Treatment is GRANTED; and,

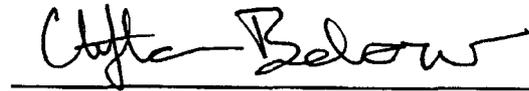
IT IS FURTHER ORDERED that photographs submitted as exhibits shall not become a public record and shall remain within the Committee's records under seal unless otherwise ordered.

BY ORDER of the Site Evaluation Committee, this 17th day of December, 2008.


Thomas Burack, Chairman
Site Evaluation Committee


Thomas Getz, Vice Chairman
Site Evaluation Committee

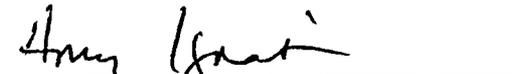

Graham Morrison, Commissioner
NH Public Utilities Commission

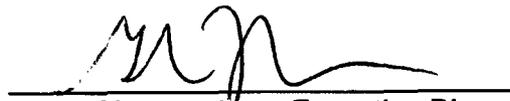

Clifton Below, Commissioner
NH Public Utilities Commission


Harry Stewart, Director-Water Div.
Dept. of Environmental Services


Robert Scott, Director
Air Resources Division, Dept. of
Environmental Services


George Bald, Commissioner
Dept. of Resources & Economic Dev.


Amy Ignatius, Director
Office of Energy & Planning


Glenn Normandeau, Executive Dir.
NH Fish & Game Department

REDACTED

REDACTED

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2008-____

RE: MOTION FOR DECLARATORY RULING
OF FLORIDA POWER & LIGHT COMPANY REGARDING TRANSMISSION
STATION RELIABILITY UPGRADE

MOTION FOR DECLARATORY RULING

NOW COMES Florida Power & Light Company (“the Applicant” or “FPL”), the owner of the transmission substation in Seabrook, New Hampshire (“Seabrook Substation”) by and through its undersigned attorneys, and pursuant to N.H. Admin. Rule Site 203.01 respectfully requests that the New Hampshire Site Evaluation Committee (the “Committee” or “SEC”) issue a declaratory ruling that FPL’s proposed reliability upgrade (“Reliability Upgrade Project”) to the Seabrook Substation does not constitute a sizeable addition to an existing facility within the meaning of RSA 162-H:5,I. As explained below, the Reliability Upgrade Project will significantly enhance the reliability of an important transmission substation. Its construction will occur within the footprint of the existing substation, and the project will comply with all applicable federal, state, and local regulatory and permitting requirements. FPL asks that the Committee rule on this motion on an expedited basis, as the construction on this upgrade must begin in March of 2009 so that crucial cutover work can occur during the next scheduled outage of the Seabrook nuclear generating facility in October of 2009.

In support of this pleading, the Applicant states as follows:

I. Background

A. The Facility

FPL-NED's 345kV Seabrook Substation in Seabrook, New Hampshire interconnects the 1,318 MW Seabrook Nuclear Generating Station ("Seabrook Generator"), the largest single generating resource in New England, with the New England electric grid. The Seabrook Substation is also a Pool Transmission Facility under the Tariff of the ISO-New England, a part of the New England Bulk Power System, and one of the more critical substations in New England. The Seabrook Substation is an integral part of the North-South Interface and the Northern New England – Scobie plus Line 394 Interface. The Seabrook Substation serves to connect three major 345kV transmission lines: the Seabrook to Ward Hill/Tewksbury 394 Line, the Seabrook to Scobie 363 Line, and the Seabrook to Timber Swamp/Newington 369 Line.

B. The Applicant

FPL is a public utility in the State of New Hampshire for the limited purpose of owning and operating the Seabrook Substation. *New Hampshire Public Utilities Commission Order No. 24,321, 89 NH PUC 267 (2004)*. FPL is an 88.2% owner of the transmission substation. The balance of the Seabrook Substation is owned by Massachusetts Municipal Wholesale Electric Company, Taunton Municipal Lighting Plant, and Hudson Light & Power Department.

The construction of the transmission substation and the Seabrook nuclear electric generating station was originally certificated by the New Hampshire Site Evaluation Committee in January of 1974 pursuant to the provisions of RSA 162-F (which has been superseded by RSA 162-H). *Order No. 11,267 in D-SF6205, 63-64 NH PUC 127 (1974)*. FPL's affiliate FPL Energy Seabrook, LLC ("FPL Energy") purchased an 88.2% share in the Seabrook Generator in 2002. FPL subsequently purchased

the Seabrook Substation from FPL Energy. *FPL Energy Seabrook, LLC and Florida Power and Light Company*, 104 FERC ¶ 61,258 (2003).

C. The Need for the Reliability Upgrade Project

FPL has concluded that it must complete a reliability upgrade to the 28-year old Seabrook Substation to ensure its continuing reliability for the New England grid. While FPL conducts a rigorous maintenance program for the Seabrook Substation, several equipment failures have occurred at the substation in the last two years. These incidents include, in February 2007, the failure of a graphite rupture disc in an SF6 gas bus enclosure, and, in January 2008, the failure of a drive rod in a 345 kV disconnect switch. These events have led to more than 26 days of unplanned outages since February of 2007, causing the unavailability of the Seabrook Generator during that time. While these breakdowns have been remedied, FPL believes that certain overall improvements are needed to the Seabrook Substation, including replacement or upgrade of aging equipment to reduce the risk of unplanned outages and other malfunctions. These reliability improvements will help improve the performance of a substation that is an integral and critical part of the New England power grid and acts as the interconnection to the electric grid for the largest base load electric generating plant in New England.

D. Description of the Reliability Upgrade Project

The proposed upgrade will take place entirely within the existing footprint of the Seabrook Substation and will not result in any increase in the voltage carried by the transmission facilities. The upgrade will address certain design issues in the substation, including the direct connection of the Reserve Auxiliary Transformers (“RATs”) to Bus No. 2, which poses reliability concerns and operational limitations. Instead, the RATs will be relocated to connect to a dedicated terminal position. The Generator Step-up (“GSU”) Transformer connections will also be relocated from their current position where they share a breaker and a half bay with the Seabrook - Scobie 363 Line, to a dedicated

double breaker bay. Also in this upgrade, five new Gas Insulated Substation (“GIS”) breakers will be installed: two will be replacements for existing breakers, and three will be new breakers. These enhancements to the substation will improve the reliability of the interconnections with the 345 kV lines, reduce the risk of unexpected outages of the Seabrook Generator, and provide greater ability to perform maintenance or future upgrades as needed without a generator outage. See Exhibit A, showing one-line diagrams of the configuration at the substation before and after the Reliability Upgrade Project. The construction will involve erecting in a portion of the substation a structure that will be somewhat taller than the existing substation structure. Again, no expansion of the substation footprint will be necessary. Attached is a photograph with a three-dimensional visual overlay of the enhanced substation which has been marked as Exhibit B. FPL has sought confidential treatment for this Exhibit pursuant to an Un-Assented to Motion for Protective Order and Confidential Treatment filed on the same date as this Motion. The estimated cost of the Reliability Upgrade Project is \$38.2 – 43.6 million (which includes the shares of FPL and the co-owners).

E. Timing of Project Work

The timing of the Reliability Upgrade Project work is driven by the refueling outage that has been scheduled for the Seabrook Generator in October 2009. It is critical to schedule the preparation and pre-outage work in a manner that helps ensure that work can be efficiently performed during the outage. Under the schedule FPL has developed, certain steps will have to commence by given dates for the project to stay on schedule. Most critically, foundation work must commence by March 1, 2009. This will allow structural/electrical installation to begin by June 1, 2009. During the October 2009 scheduled outage, the cutover from the old configuration and equipment to the new configuration and equipment will begin with the configuration of the RATs reconnection. The second phase of the project will then be performed consistent with the next Seabrook Generator refueling outage scheduled for April

2011; during this outage the remaining two new breakers will be put in service and reconfiguration of the GSU will be completed.

E. Other Regulatory Permits and Compliance

FPL has reviewed the applicability of environmental, land use and energy-related approval and permitting requirements associated with the Reliability Upgrade Project and discussed these requirements with agency personnel. The potential impact of the Reliability Upgrade Project is minimal as a result of its limited scope, particularly because the construction is within the existing substation footprint. To the extent any federal, state and local authorizations are needed, FPL has concluded that they can be obtained expeditiously and well before commencement of construction in March 2009. This assessment is based, in part, upon discussions with federal, state and local regulators with potential jurisdiction over the Reliability Upgrade Project.

FPL further emphasizes that the Reliability Upgrade Project is intended to comport with all federal, state and local standards and best management practices and FPL has every intention of remaining in full compliance throughout all phases of the project. Thus, full SEC review of environmental and reliability factors would be duplicative and would be unnecessary to protect the public interest.

A brief review of the key regulatory issues follows:

- U.S. Environmental Protection Agency (“EPA”): FPL has confirmed that the Reliability Upgrade Project qualifies for a construction general permit under the National Pollutant Discharge Elimination System (“NPDES”) program for all stormwater discharges and dewatering activity discharges. An individual project NPDES permit will not be required. Instead, federal authorization to conduct the construction activities for the Reliability Upgrade Project would become effective

upon submission of a Notice of Intent to the EPA Region I water program and would be conditioned upon compliance with regulatory standards that accompany the construction general permit.

- U.S. Army Corps of Engineers (“USACE”): FPL understands that the Reliability Upgrade Project does not require any permits or other authorizations from the USACE, and has received confirmation of this conclusion from the USACE.
- New Hampshire Department of Environmental Services (“DES”): FPL has confirmed with officials in DES that no permits or approvals under the NH Comprehensive Shoreland Protection Act (“CSPA”), RSA 483-B, or the NH Wetlands law, RSA 482-A, are required. Because the Reliability Upgrade Project will not result in the creation of any additional impervious surface within the 250 foot area of CSPA jurisdiction, DES has determined that no permit, waiver or variance is required under the CSPA. Similarly, because there are no jurisdictional wetlands within the project area and it is located outside the 100 foot upland Tidal Buffer Zone (100 feet landward of the highest observable tide line), the project does not require a wetlands permit. Also, no Alteration of Terrain permit is required because the project will not involve excavation or earth moving with an impact of greater than 50,000 square feet.
- New Hampshire Public Utilities Commission (“PUC”): FPL has discussed the upgrade with PUC Staff and will take steps to comply with the certification process of RSA 374-A:7,II(c), a statutory alternative to obtaining PUC approval for financing for the Reliability Upgrade Project. At the suggestion of the PUC

staff, FPL will also apply for a waiver from the requirement that a report be filed before a utility undertakes a capital improvement costing \$100,000 or more.

- ISO-New England: FPL is in the process of securing approvals from ISO-NE for the Reliability Upgrade Project, consistent with the requirements of the ISO-New England Tariff.
- Town of Seabrook (“Town”): FPL will comply with local land use ordinances by applying for a building permit from the Town.

II. The Committee’s Authority for Declaratory Ruling

The Committee’s rules allow entities to submit a motion for declaratory ruling. N.H. Admin. Rule Site 203.01. Under the rules, the Committee has 90 days from the time a motion is submitted to rule on the motion. Site 203.02(b).

Under RSA 162-H:5,I, a “sizeable addition” to a facility, like the Seabrook facility, certificated prior to January 1, 1992 (under the provisions of the former site evaluation law, RSA 162-F, which was repealed in 1991) must also obtain a certificate pursuant to the current law, RSA 162-H, not the law that was in effect when the facility was originally certificated. RSA 162-H:5,II.

Because neither RSA 162-H, nor the Committee’s rules, N.H. Admin. Rules Site Chapters 100, 200 and 300, provide any further definition of what constitutes “sizeable” changes or additions, FPL hereby requests a declaratory ruling on whether the proposed upgrade constitutes a “sizeable addition”. *See* RSA 541-A:1,V (“declaratory ruling’ means an agency ruling as to the specific applicability of any statutory provision or of any rule or order of the agency”). *See also* RSA 541-A:16,I(d) (requiring each agency to “[a]dopt rules relating to the filing of petitions for declaratory rulings and their prompt disposition”).

III. Prior Decisions of the Committee on
What Constitutes a Sizeable Addition to an Existing Facility

The Committee has approved other similar requests for a determination that a particular addition is not sizeable within the meaning of this statute. *Letter of Michael P. Nolin, Chairman NH Site Evaluation Committee, dated January 26, 2004 to Mitchell S. Ross of FPL Energy regarding proposed upgrade of Seabrook Station nuclear power facility; Letter of Michael P. Nolin, Chairman NH Site Evaluation Committee, dated January 29, 2004 to Christopher J. Allwarden of Public Service Company of New Hampshire regarding proposed replacement of coal-fired electric generating unit at Schiller Generating Station in Portsmouth.*

On June 25, 2003, FPL Energy (the separate, but affiliated entity, that owns 88.2% of the Seabrook Generator) sought a ruling from the Committee on whether “minor in-plant modifications and certain equipment changes” throughout Seabrook Station to accomplish a 6.7% increase in the output of the plant would constitute a sizeable addition (“FPL Energy June 2003 Request”). The project was estimated to cost approximately \$46 million. Even though the modifications would result in a fairly significant increase in the output of the plant, the request emphasized that internal modifications to the plant would not result in significant environmental impacts, that it was an alteration or modification of an existing facility rather than a large-scale project, and that the project would be reviewed by other agencies. FPL Energy June 2003 Request at 3.

The Committee responded in a January 26, 2004 letter stating that based on the FPL Energy June 2003 Request it did not find that the project was a sizeable change or addition to the facility (“Committee January 29, 2004 Letter”). The Committee noted that all construction necessary to the proposed upgrade would occur within the footprint of the existing facility, that the project would not have any impact on the orderly development of the region and there would be no adverse impacts on

aesthetics, historic sites, air and water quality, the natural environment or public health and safety. *Id.* at 1. The Committee therefore found that the upgrade was not “a sizeable change or addition to the facility requiring the filing of a formal application.” *Id.* at 1-2.

Similarly, on September 3, 2003 Public Service Company of New Hampshire (“PSNH”) submitted a request to the Committee asking for a determination of no jurisdiction over the replacement of one of the existing 45 MW (net, 50 MW gross, output) dual capability (coal-fired with the capability to burn oil as a secondary fuel option) electric generating units at the Schiller Generating Station in Portsmouth, with a new dual capability unit (wood-fired with the capability to burn coal as a secondary fuel option) of the same size. The project involved the retirement of the existing boiler and its replacement with a similarly-sized boiler that would be installed and housed in a new structure adjacent to the existing units. The project also involved the installation of storage facilities and associated equipment within and adjacent to Schiller’s existing storage facilities, but within the confines of the existing Schiller property site. PSNH argued that this project, which cost over \$70 million, was not a “sizeable addition” because no new generation capacity would be added; it would only involve the replacement of an existing boiler with another similarly-sized one. PSNH also cited prior conversions of three units at Schiller to coal-burning capability in 1984, which were not subject to review and approval by the Committee, and the 1992 conversion of the 415 MW Newington Station to the capability to burn natural gas in addition to coal, which also was not subject to review and approval of the Committee, in support of its request for a statement of no jurisdiction.

The Committee responded in a January 29, 2004 letter in which it concluded that the generator replacement was not a sizeable addition to the facility (“Committee January 26, 2004 Letter”). The Committee took into account that “the facility will not sizably increase either in size or in generating capacity,” and that “any and all construction necessary to the proposed conversion will occur within the confines of the presently existing site.” *Id.* at 2.

IV. Analysis

Based on the precedent of the FPL Energy and PSNH cases discussed above, and the Reliability Upgrade Project's limited scope, the Reliability Upgrade Project should not be deemed to be a sizeable addition to an existing facility requiring full review under RSA 162-H.

The FPL Energy and PSNH cases show that the Committee has determined that a project involving construction within the existing footprint of a certificated facility or the confines of the existing site does not constitute a sizeable addition. Other criteria that the Committee has applied include that a project does not have any impact on the orderly development of the region, and that there would be no adverse impacts on aesthetics, historic sites, air and water quality, the natural environment or public health and safety.

The Reliability Upgrade Project meets all these criteria. The project is an enhancement and upgrade of an existing substation. The purpose of the project is to enhance the reliability of a substation that is essential for the New England transmission grid and to the Seabrook Generator. The construction involves replacement of equipment, installing additional breakers, and making reconnections within the facility. All construction will take place within the substation's existing footprint, resulting in a taller structure, but one that still occupies the same area. The increased height of the substation will still be lower than the higher portions of the adjacent structures associated with the Seabrook Generator. See Exhibit B, for which FPL has sought confidential treatment pursuant to an Un-Assented to Motion for Protective Order and Confidential Treatment filed on the same date as this Motion. The project will not expand the footprint of the existing substation and will not result in any increase in the voltage or power being transported through the substation.

In addition, the Reliability Upgrade Project will not change how the existing land is being used and thus will not have any impact on the orderly development of the region. There will be no adverse

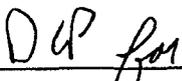
impacts on aesthetics, historic sites, air and water quality, the natural environment or public health and safety. While the proposed upgrade will involve replacing an existing structure with one that is somewhat taller, as the attached drawings and simulations show, the new structure will still be shorter than the adjacent building and likely will be visible only to members of the public from limited locations outside the confines of the facility. Given these facts, FPL believes that this proposed upgrade is not a sizeable addition of the sort that the Legislature intended to be subject to a full review by the Committee. FPL submits, based on the precedent discussed above, and the scope of the Reliability Upgrade Project, that it would be entirely consistent with prior decisions of the Committee to determine that the Reliability Upgrade Project should be deemed to not be a sizeable addition to an existing facility and therefore not require an RSA 162-H certificate.

Finally, FPL wishes to add that it may, if deemed necessary, also submit to the Committee pursuant to RSA 162-H:4,IV a request for exemption from the requirements of RSA 162-H for the Reliability Upgrade Project. If at all possible, FPL wishes to avoid having to take this step, but will do so if necessary to secure the appropriate authorization from the Committee for the Reliability Upgrade Project so that it can stay on the schedule described above. With this in mind, if it is possible for the Committee to expedite consideration of this motion for declaratory ruling or to provide FPL with a preliminary indication of whether the Committee views this request for a declaratory ruling favorably within 30 days of filing, it could avoid the need for filing the request for an exemption. If FPL does not have such indication within the first 30 days of this filing, it is likely to submit a request for exemption, which the Committee by statute has 60 days to address, so that FPL can obtain a ruling on either the motion for declaratory ruling or the request for an exemption by mid January 2009.

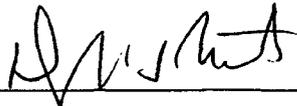
IV. Conclusion

Wherefore, FPL respectfully requests that the New Hampshire Site Evaluation Committee issue a declaratory ruling declaring that the proposed upgrade to the transmission substation is not a "sizeable addition" within the meaning of RSA 162-H:5,I, and grant such other relief as may be just and reasonable.

Respectfully submitted,
FPL
By Its Attorneys



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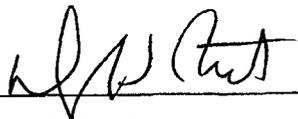


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Dated: October 22, 2008

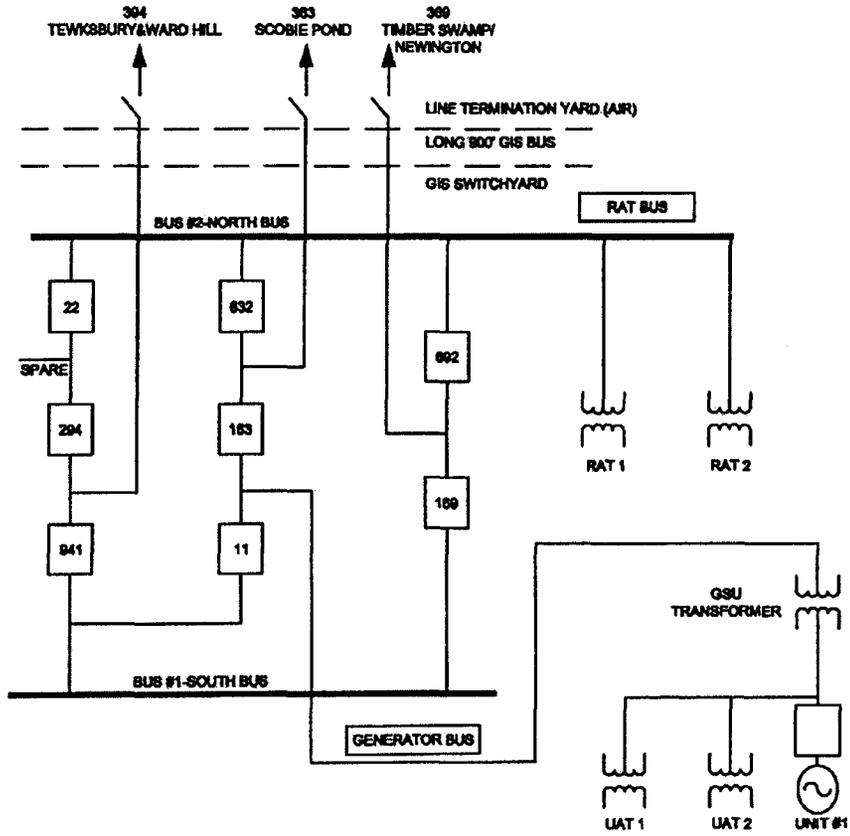
Certificate of Service

A copy of this Motion and Application has been served by email and first class mail this 22nd day of October, 2008 on the Counsel to the Site Evaluation Committee and the Office of the Attorney General.

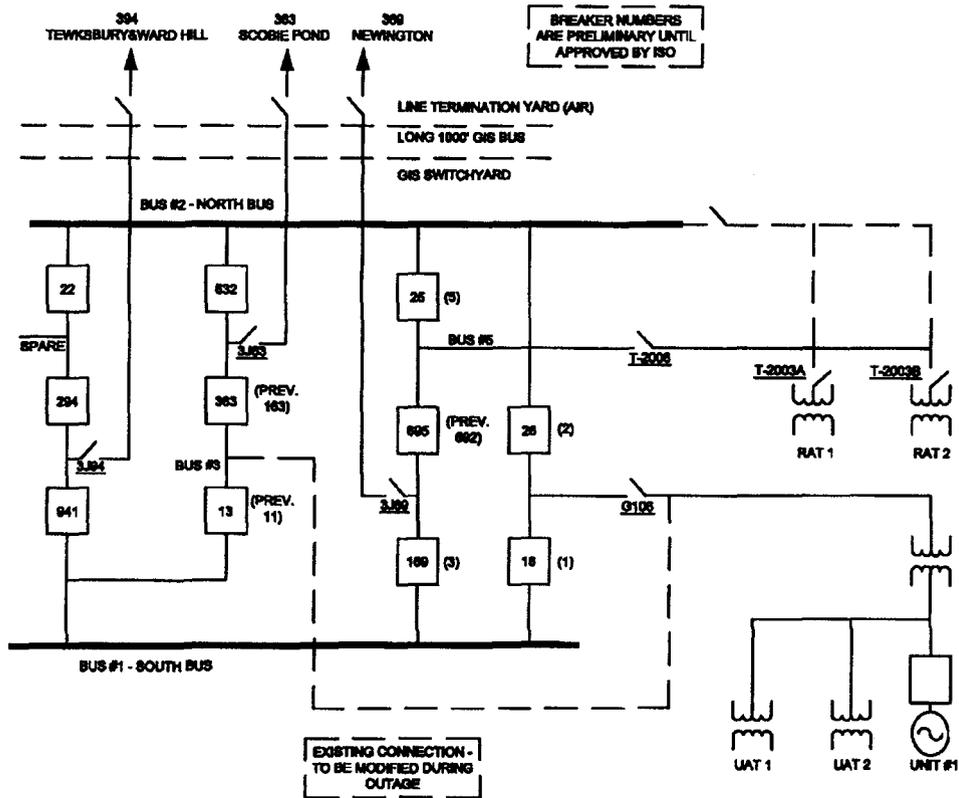


Douglas L. Patch

EXHIBIT A



Current configuration of the Seabrook Substation.



Configuration of the Seabrook Substation upon completion of the Reliability Upgrade Project

EXHIBIT B
[REDACTED]