

September 9, 2009

William L. Chapman
George W. Roussos
Howard M. Moffett
James E. Morris
John A. Malmberg
Martha Van Oot
Douglas L. Patch
James P. Bassett
Emily Gray Rice
Steven L. Winer
Peter F. Burger
Lisa Snow Wade
Susan S. Geiger
Richard Y. Uchida
Jennifer A. Eber
Jeffrey C. Spear
Connie Boyles Lane
Judith A. Fairclough
Todd C. Fahey
Vera B. Buck
James F. Laboe
Robert S. Carey
John M. Zaremba
Courtney Curran Vore
Justin M. Boothby
Heidi S. Cole
Jeremy D. Eggleton
Rachel A. Goldwasser
Joshua M. Pantescio

Via HAND DELIVERY and Email
Thomas S. Burack, Chairman
NH Site Evaluation Committee
c/o NH Department of Environmental Services
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

Re: Docket No. 2009-01, Motion of Campaign for Ratepayers Rights, et. al., for a Declaratory Ruling Regarding Modifications to Merrimack Station Electric Generating Facility

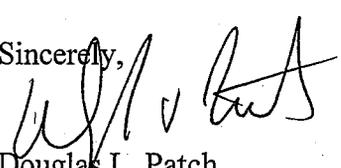
Dear Chairman Burack:

Enclosed for filing with the Site Evaluation Committee in the above-captioned matter please find an original and 9 copies of the Moving Parties' Contested Motion for Rehearing.

Thank you for your assistance and cooperation. Please let me know if you have any questions.

Maureen D. Smith
(Of Counsel)

Sincerely,


Douglas L. Patch

cc. Service List by email
Enclosure

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2009-01

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

Unassented to Motion for Rehearing

NOW COME the Campaign for Ratepayers 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 (“the Moving Parties”), pursuant to RSA 541:3 and NH Admin. Rule Site 202.29, and respectfully request that the New Hampshire Site Evaluation Committee (the “Committee”) rehear and reconsider the Order Denying Motion for Declaratory Ruling, which was issued in the above-captioned docket on August 10, 2009 (the “Order”). In support of this Motion, the Moving Parties state as follows:

1. Pursuant to RSA 162-H:11 decisions of the Committee are reviewable in accordance with RSA 541. Under RSA 541:3 “any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order”. The Moving Parties brought the Motion for Declaratory Ruling in this docket and are therefore parties to this proceeding. In addition, they are directly affected by the decision of the Committee because the Committee has imposed on the Moving Parties, in

a manner that is arbitrary and capricious and beyond the authority the Committee has been granted by statute, the costs of the proceeding estimated to be in the range of \$25,000. Transcript of July 7, 2009 Meeting, pages 94-95. The Moving Parties are therefore proper parties to bring this Motion for Rehearing.

2. The Committee ruled that the Scrubber Project is not a sizeable addition to the Merrimack Station facility. Order, p.19. For the reasons stated in the Dissent of Vice-Chairman Getz and laid out in this Motion, the Committee's ruling was unsupported by the facts and contrary to law. In particular, the Committee's failure to place significant weight on the \$457 million cost of the Scrubber Project; its refusal to consider the increased "size" of the new structures in three dimensions, Order, p. 12-13; and its dismissal of the fact that PSNH undertook modifications to Merrimack Unit 2, increasing its capacity by up to 17.75 megawatts specifically to provide power for the scrubber parasitic load as PSNH represented to regulators on multiple occasions, are actions that are contrary to governing law, the plain meaning of the statute, and the longstanding interpretation of that law by the Committee.

3. The Committee acted arbitrarily in rejecting the Moving Parties' estimates of the three-dimensional size or volume of new structures associated with the Scrubber Project, Order, p. 12, while at the same time refusing to require PSNH to submit reliable facts on the total dimensions of major existing structures and proposed additions. Increased dimensions are clearly relevant to whether "sizeable additions" are proposed and there is no other proceeding during which this Committee has refused to consider total dimensions.

4. The Committee acted contrary to law in determining that the Scrubber Project would meet all criteria under RSA 162-H:1, II without an adequate record for doing so. Order, p. 10-11. This is particularly true with regard to the Committee's conclusory finding that there would not appear to be any unreasonable adverse impacts on public health, safety or the environment. Order, p.11. The Moving Parties argued that this Project will potentially result in a discharge of mercury into the Merrimack River, which would warrant Committee review under RSA 162-H. See for example, Transcript of May 8, 2009 Hearing, page 68, lines 18-21; page 70, lines 9-14. The Committee disregarded this and other arguments regarding potential impacts of the Scrubber Project and, instead, pre-judged the outcome of a full Committee review based upon an incomplete record.

5. In addition, the Committee's ruling on the "sizeable addition" issue ignores the plain meaning of the statute. If the Committee's decision that this addition to Merrimack Station does not constitute a sizeable addition stands, it will have rendered the statute meaningless, and thus will have repealed this provision in the statute by implication, a doctrine that is disfavored in this state. *Opinion of the Justices*, 107 N.H. 325, 328 (1996); *Arnold v. City of Manchester*, 119 N.H. 859, 863 (1979). If a project that PSNH itself described as "monumental" and "the biggest environmental project in the state of New Hampshire's history" is not considered "sizeable" then this provision of the law may never again be used to invoke jurisdiction over additions to energy facilities in this state. The Moving Parties strongly suggest that the Committee conduct a site visit so that the members can see how sizeable the modifications being made to Merrimack Station are. Attached is a copy of an article from the Concord Monitor August 17, 2009

issue which describes the reaction of neighbors and which describes the new stack as “New Hampshire’s tallest structure.”

6. The Committee assessed the Moving Parties, on a joint and several basis, all Committee costs associated with this proceeding, including the Committee’s legal fees, fees for the court reporter and secretarial fees. Order, p. 16-18. During its deliberations at a public meeting on July 7, 2009 prior to the issuance of the Order, the Committee voted 6-3 to impose these costs on the Moving Parties. When the Committee by letter from the Chairman dated May 12, 2009 first sent a bill to the Moving Parties for costs of the proceeding that had been incurred as of that point in time, the Moving Parties, by a letter dated May 15, 2009, objected to imposing these costs upon them for a number of reasons. The Moving Parties further presented oral arguments disputing the imposition of these costs at the July 7, 2009 hearing before the Committee; these arguments are included in the record. Transcript of July 7, 2009 Meeting, pages 82-86. The Moving Parties submit for the reasons articulated in the letter of May 15, 2009, the arguments made on July 7, 2009, the arguments made in this Motion, and the reasons articulated by the three dissenting committee members, that the Committee acted outside of its authority and contrary to the law in making this decision.

7. Pursuant to RSA 162-H:10,V the Committee has the authority to “employ a consultant or consultants, legal counsel and other staff in furtherance of the duties imposed by this chapter, the cost of which shall be borne by the applicant in such amount as may be approved by the committee in the case of an energy facility”. The term “applicant” is used throughout the chapter (see RSA 162-H:4,IV; 162-H:5,III; 162-H:6-a,VII; 162-H:7,III, IV, V, VI, and IX; 162-H:8,IV and V; 162-H:10, I, IV, and V) in a

way that is clearly meant to apply to an entity that is intending to construct an energy facility, or in this case, an addition to an existing facility. In addition, the Committee has defined “applicant” in its rules. Admin. Rule Site 102.03 provides that “‘applicant’ means ‘any person seeking to construct and operate any energy, renewable energy or bulk power supply facility within this state.’” The term “applicant” is used throughout the Committee’s rules in the same manner and with the same meaning as defined in the rule cited above and as used in the statute (*See* Site 102.06; 102.09; 102.13; 102.17; 201.01(c); 201.02; 201.19(b); 202.20; 202.22; 202.25; 301.01; 301.03; 301.04; 301.05). In no context, in either the law or the rules, is the term “applicant” used or defined in the way that the majority of the Committee has tried to apply it here to the Moving Parties. None of the Moving Parties meets this definition. Public Service Company of New Hampshire (“PSNH”), the entity that is seeking to construct an addition to its existing energy facility that is the subject of the Motion for Declaratory Ruling, clearly is the only party that meets this definition, regardless of whether the addition is a “sizeable addition” under the terms of the statute.

8. That the Committee’s rules have the effect of law is beyond dispute. RSA 541-A:22,II; *State v. Elementis Chemical, Inc.*, 152 NH 794, 803 (2005); *Portsmouth Country Club v. Town of Greenland*, 152 NH 617, 621 ((2005). *See also* Commissioner Below’s comments as one of the three dissenting votes on this issue. Transcript of July 7, 2009 Meeting, page 125, lines 7-24, and page 126, lines 1-8. Moreover, as the NH Supreme Court has repeatedly held, the words of rules, like statutes, should be accorded their plain meaning. *In re Dept. of Transportation*, 152 NH 565, 571-572 (2005); *In re Flynn*, 145 NH 422, 423 (2000). The Committee’s tortured attempt to define the term

“applicant” as including the Moving Parties in this proceeding is contrary to the plain meaning of the law and the Committee’s own rules, and contrary to the longstanding interpretation of “applicant” that has been applied by this Committee over many years. The majority’s reliance on the dictionary definition of “apply” is misplaced and irrelevant given the definition the Committee has in its rules and the longstanding interpretation of the statute. Even if the Committee could substitute reliance upon the dictionary definition of “applicant” in lieu of its own rules, the Moving Parties do not meet that definition. The Moving Parties did not “seek aid” from the Committee but, rather, suggested to the Committee that it appropriately exercise its authority under RSA 162-H to review the PSNH turbine and scrubber projects. *See* Order, p. 18.

9. The Committee, as an agency of the state, must act within its delegated powers. *Appeal of Natural Gas*, 121 NH 685, 689 (1981). Administrative officials do not possess the power to contravene a statute and can not add to, detract from, or in any way modify statutory law. *Formula Dev. Corp. v. Town of Chester*, 156 NH 177, 182 (2007); *Fischer v. N.H. State Bldg. Code Review Bd.*, 154 NH 585, 589 (2006). By taking the action that a majority of its members took here the Committee has modified statutory law and acted beyond its delegated powers. The Committee only has the authority expressly granted or fairly implied by statute. *Appeal of PSNH*, 130 NH 285, 291 (1988). Furthermore, an agency can not undertake ad hoc rulemaking, *Appeal of Nolan*, 134 NH 723, 728 (1991), which is what its actions constitute here.

10. In its search for some statutory authority for assessing costs against the Moving Parties, the Committee cites its “inherent authority” under RSA 162-H:4,II to conduct hearings as necessary and appropriate. Order, p. 17-18. See also Transcript of

July 7, 2009 Meeting, page 88, lines 15-24; page 89 lines 1-23; page 97, lines 14-16; page 98, lines 1-3; page 125, lines 11-16; page 126, lines 14-24; and page 127, lines 1-10. The Committee reasoned that, otherwise, RSA 162-H would have provided a method for funding the operations of the Committee. Order, p. 18. This reasoning is legally flawed. The express authority granted to the Committee to conduct hearings does not translate into inherent authority to assess costs against persons who participate in such hearings, even “moving parties” who may have initiated a proceeding. To the contrary, the Legislature’s failure to provide a method for the Committee to cover the costs associated with hearings, other than the RSA 162-H authority to charge Committee costs to the facility seeking to construct facilities or additions thereto, indicates that the Committee’s attempt to shift its costs to the Moving Parties is *ultra vires*. The Committee has no “inherent” authority to charge its costs to third party entities, all it has is the statutory authority to charge the expenses to PSNH. See the Public Utilities Commission’s *Order Re Congestion on the Telephone Network Caused by Internet Traffic*, 89 NHPUC 173, 176 (2004) (hereinafter “Congestion Order”), where the Commission rejected a request for recovery of costs, noting that it only has such powers as are granted to it by the Legislature, citing *Appeal of Omni Communications*, 122 NH 860 (1982), and *Appeal of Land Acquisition, L.L.C.*, 145 NH 492, 498 (2000), which rejected a claim that the Board of Tax and Land Appeals had inherent authority to award attorney’s fees. (“We disagree with the respondent’s assertion that the board has inherent authority to award attorney’s fees. While a court may have such inherent authority, see *Emerson v. Town of Stratford*, 139 N.H. 629, 631, 660 A.2d 1118, 1120 (1995), the same is not true for a quasi-judicial body.”) A quasi-judicial administrative body does not have the authority to utilize an

equitable remedy unless expressly granted such authority by the Legislature. *Appeal of Somersworth School District*, 142 NH 837, 841 (1998). Because the Legislature has not granted the Committee any such authority in RSA 162-H, the Committee must look to the plain meaning of the statute with regard to its authority to impose costs, just as the Commission did in the *Congestion Order* cited above. *See* 89 NHPUC at 176, 177.

11. The Committee suggests that the Moving Parties could have elected to file a petition pursuant to RSA 162-H:2,X-a, instead of filing a Motion for Declaratory Ruling, and said if they had done so PSNH would have been required to pay the fees. Order, p. 18. It does not follow, logically or legally, that because they filed a motion rather than a petition, the Moving Parties must bear the costs; such a conclusion exalts form over substance, and there is no authority for it. A motion for declaratory ruling is specifically authorized by both the Committee rules, Site 203.01, and the NH Administrative Procedures Act, RSA 541-A:16,I(d). The Committee agreed that it had jurisdiction to consider the issue of whether the Scrubber Project constituted a “sizeable addition”, a motion that Vice-Chairman Getz noted “presumes standing”. Transcript of May 8, 2009 Hearing, page 52, lines 2-12 and page 58, lines 8-19. If the Moving Parties had brought a petition as the Committee suggested, there would have been no change in the analysis of who is responsible for the costs of the proceeding. The Committee’s authority to charge expenses is the same, regardless of whether its action is initiated by petition or motion. That authority exists only as noted above, under RSA 162-H:10,V. That authority, the only authority the Committee has to charge expenses, is not changed in any way by virtue of which mechanism is used to put the issue of whether or not this Project is a “sizeable addition” before the Committee. Therefore, the Moving Parties’

filing of a motion for declaratory ruling, instead of a petition, does not change the Committee's statutory authority to assess costs only against the facility owner. See also comments of Commissioner Below, Transcript of May 8, 2009 Hearing, p.55, line 11 through page 56, line 17.

12. The Moving Parties further point to NH Supreme Court rulings in analogous situations. "An award of attorney's fees must be grounded upon statutory authorization, a court rule, an agreement between the parties, or an established exception to the rule that each party is responsible for paying his or her own counsel fees." *LaMontagne Builders, Inc. v. R. Scott Brooks &a.*, 154 N.H 154, 158 (2006). The common law rule in this State that each party is responsible for payment of its own attorneys fees is based upon the underlying principle that no person should be penalized for merely prosecuting or defending a lawsuit. See *Harkeem v. Adams*, 117 N.H. 687, 690 (1977). An additional important consideration is that "the threat of having to pay an opponent's costs might unjustly deter those of limited resources from prosecuting or defending suits." *Id.* As the Moving Parties pointed out in the letter of May 15, 2009 and in its arguments to the Committee on July 8, imposing these costs on moving parties will have a chilling effect on citizens who ask the Committee to address serious questions such as those raised by the Motion for Declaratory Ruling. A number of Committee members seemed to agree. Transcript of July 7, 2009 Meeting, page 96, lines 8-12; page 100, lines 21-22; page 100, lines 8-9. Although this case involves the SEC's costs and fees, rather than PSNH's costs and fees, the principles established under common law for award of opposing parties' costs and fees apply equally here. The Moving Parties filed a motion normally filed by facilities themselves, even for smaller projects. There are no

overriding principles that would allow the SEC to shift costs normally borne by the facility owner (which should have sought the same declaratory ruling), such as bad faith conduct or maintaining a patently unreasonable position. See *Daigle v. City of Portsmouth*, 137 N.H. 572, 574 (1993). The Dissent of Vice-Chairman Getz makes clear that the Moving Parties had a good faith basis for filing their motion. Moreover, there was no “clearly established right” for PSNH to increase the size of its plant by approximately 40 to 50% without SEC review. See *Funtown USA v. Town of Conway*, 129 N.H. 352, 354 (1987). Had the Moving Parties prevailed, there is little doubt that the facility owner would have been required to pay the Committee’s legal and transcription fees, as required by rule. That the Moving Parties did not prevail does not mean that they are responsible for the costs and for the Committee to do otherwise suggests a punitive action, which is *ultra vires*. See *Daigle* at 575 (“the fact that those claims later were unsuccessful does not alone warrant an award of attorney’s fees”).

13. If the Attorney General had submitted such a motion to the Committee, or if PSNH had asked the Committee whether this was a sizeable addition, as it did with the much smaller Schiller project and as other owners of generation facilities have done with other projects, or if the Committee had addressed the issues raised by the Motion for Declaratory Ruling of its own discretion, the Committee would no doubt have imposed the costs on PSNH. As at least one member of the Committee noted, PSNH should have followed the requirements of RSA 125-O:13 and the tradition that owners of generating facilities have followed, and should have asked the Committee whether or not this Project constituted a sizeable addition. Transcript of July 7, 2009 Meeting, page 98, lines 3-24, page 99 lines 1-21; page 122, lines 9-12. It is therefore inappropriate and beyond the

Committee's authority to penalize the Moving Parties for raising what members of the Committee recognized was a good faith argument. *See, e.g.*, Transcript of July 7, 2009 Meeting, page 123, lines 17-19.

14. Although the Moving Parties had no objection to the Committee's engagement of outside counsel, the Committee was not required to hire outside counsel to advise and assist it in ruling on the motion. The Committee could have used attorneys employed by the Attorney General's Office, which are available to the Committee, as an agency of the state, and upon which it has relied in other proceedings. RSA 7:8. The Committee also could have relied upon attorneys employed by the PUC or DES. The agency attorneys would not have invoiced the Committee for their services, as private counsel must do, suggesting again that the Legislature purposely limited the Committee's authority to assess costs only against the entity seeking to construct a facility.¹

15. The Committee's failure to resolve the issues of fees and costs early in the process has prejudiced the Moving Parties, requiring reversal of the Order on costs. Several Committee members suggested during deliberations that the issue of costs should have been resolved early in the proceeding. Transcript of July 7, 2009 Meeting, page 94, lines 5-14; page 128, lines 7-14; page 129, lines 10-17. The Moving Parties objected to assessment of costs against them promptly upon their receipt of the first invoice (their May 15, 2009 letter was sent within a day or two of receiving the May 12, 2009 letter from Chairman Burack), setting forth the reasons for the objection. They reasonably

¹ In its deliberations on the instant Motion for Rehearing, the Moving Parties respectfully request that the Committee, should it seek legal advice, employ the Attorney General's Office as its legal counsel. By statute, as noted above, the Attorney General is available to provide legal advice and assistance to the Committee in addressing the Motion for Rehearing. As the Motion addresses the authority of the Committee to assess the cost for its legal counsel upon a party other than the applicant seeking to construct an energy facility (or sizeable addition to an existing facility), use of the Attorney General would assure that the Committee's determination on the motion will not add to the cost of legal counsel for the Committee.

relied upon the Committee's failure to respond with a renewed request for payment of the invoice for legal fees. Had the Moving Parties received any indication that they would be assessed not only initial legal fees, but all costs incurred by the Committee, they could have considered taking appropriate action, including but not limited to seeking judicial intervention, moving for an expedited ruling on costs assessment by the Committee, and withdrawing the motion. The Committee's failure to respond in a timely manner to the Moving Parties' objection and subsequent Order for payment of all costs and fees is contrary to principles of equity and fairness.

16. For the reasons stated above, the Moving Parties believe that the Committee has acted beyond its authority and that it should reconsider its rulings with regard to (a) sizeable addition and (b) imposing the costs of this proceeding upon the Moving Parties.

17. As required by Admin. Rule Site 202.14(d) the Moving Parties made a good faith effort to obtain the concurrence of the only other party, PSNH. PSNH does not assent to the motion.

Wherefore, the Moving Parties respectfully request that the New Hampshire Site Evaluation Committee:

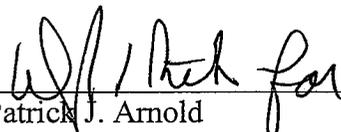
- (a) Conduct a site visit to Merrimack Station;
- (b) Rehear and reconsider its ruling that the Scrubber Project is not a "sizeable addition" under RSA 162-H;
- (c) Rehear and reconsider its ruling that the Moving Parties are jointly and severally liable for the costs of this proceeding;

- (d) Charge the costs associated with reviewing and ruling upon this Motion for Rehearing to the facility owner, as required by statute; and
- (e) Take such other action as would be just and reasonable.

Respectfully submitted,

CAMPAIGN FOR RATEPAYERS RIGHTS

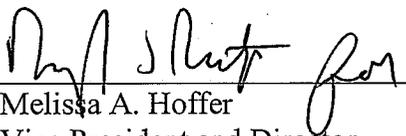
HALIFAX-AMERICAN ENERGY CO., LLC

By: 
Patrick J. Arnold
Its Executive Director
Phone: (603) 657-0975
patrick.arnold2@hotmail.com

By: 
James W. Rodier
Its Attorney
1500A Lafayette Road, No. 112
Portsmouth, NH 03801-5918
Phone: (603) 559-9987
jrodier@freedomenergy.com

CONSERVATION LAW FOUNDATION

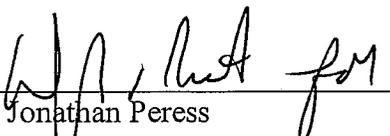
TRANSCANADA HYDRO NORTHEAST INC.

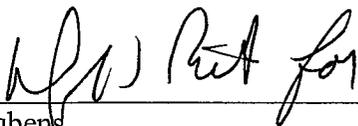
By: 
Melissa A. Hoffer
Vice President and Director
New Hampshire Advocacy Center
27 North Main Street
Concord, NH 03301-4930
Phone: (603) 225-3060
mhoffer@clf.org

By: 
Douglas L. Patch
Its Attorney
Orr & Reno, P.A.
One Eagle Square
Concord, NH 03301
Phone: (603) 223-9161
DPatch@orr-reno.com

FREEDOM LOGISTICS LLC

UNION OF CONCERNED SCIENTISTS

By: 
N. Jonathan Peress
Its Attorney

By: 
Jim Rubens
Its Consultant

Downs Rachlin Martin PLLC
8 South Park Street
Lebanon, NH 03766
Phone: (603) 448-2211
JPeress@drm.com

Phone: (603) 643-6059
JimRubens@aol.com

GRANITE RIDGE ENERGY, LLC

By: Howard M. Moffett
Howard M. Moffett
Maureen D. Smith
Its Attorneys
Orr & Reno, P.A.
One Eagle Square
Concord, NH 03301
Phone: (603) 223-9132
HMoffett@orr-reno.com
MSmith@orr-reno.com

Dated: September 9, 2009

Certificate of Service

A copy of this Motion and Application has been served by first class mail or email this
9th day of September, 2009 on Public Service Company of New Hampshire and the
service list in this docket.

9/9/09
Date

Douglas L. Patch
Douglas L. Patch

590034_1.DOC



Photos by JOY LEWIS / Monitor

The Bow scrubber can be seen from Tom and Stacey Lamy's backyard on Pembroke Road in Pembroke. Below: John Frazer Barbara Savage-Frazer can see the Bow scrubber from their apartment on Riverview Way in Pembroke.

PEMBROKE

Scrubber springs into view

Residents see towering structure as 'necessary evil'

By AMY AUGUSTINE
Monitor staff

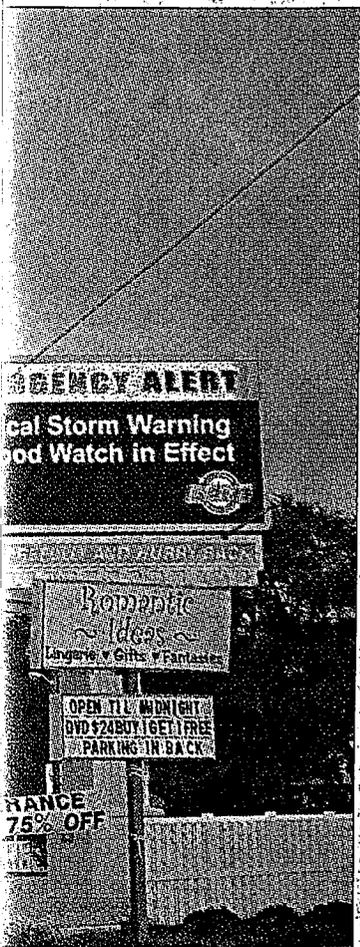
The colossal tower that stands behind Tom and Stacey Lamy's house in Pembroke is hard to miss from the road.

Even miles across the river from where the chimney sits in Bow, PSNH's new gray structure is clear as day, and it went up mighty fast, the Lamys said yesterday while swimming with their kids in the backyard of their Pembroke Road home.

"It felt like it went up overnight," Tom Lamy said. "There was nothing, then all of a sudden, there it was. Once it broke the tree line, we noticed it. We're basically living in the shadow of it."

Luckily, they said, there's a line of oak trees in their backyard, obscuring the unsightly view directly from the house. Lamy can see the scrubber when he mows





AP

Malton Beach, Fla., yesterday by today.

didn't threaten any land.

Despite the storms, a warmer weather pattern called El Nino over the Pacific Ocean is generally expected to limit the formation of tropical storms in the Caribbean and Atlantic this year, said Brian Daly, a meteorologist with the national weather service in Mobile, Ala.

"It's pretty frequent that an El Nino year would be somewhat delayed with fewer storms," Daly said.

Forecasters revised their Atlantic hurricane season predictions after the first two months of the season passed without any named storms developing.

SCRUBBER

Continued from A1

the lawn, he said, and though it isn't pretty to look at, Tom Lamy said, he views it as a "necessary evil."

"It's something this area needs, but no one wants it in their backyard," Lamy said.

The stack, which will ultimately top off at 445 feet — making it New Hampshire's tallest structure — will act as a channel for emissions to

exit Merrimack Station's boilers.

The emissions will pass through a new scrubber aimed at

reducing pollutants such as mercury, carbon and

sulfur dioxide. By the time the \$457 million project is complete in 2012,

the company says, the plant will

rank among the cleanest coal-fired power plants in the

country.

Most abutters interviewed agreed that the upgrades would ultimately be an environmental plus,

especially ones who complained about finding a thin layer of soot the old stack deposited on their property

each spring. That doesn't make the stack any less of a visual monstrosity, they said,

likening it to the Eiffel Tower, Empire State Building and the uncontrollable plant

from *Jack and the Beanstalk*.

"Oh, I thought it was Disney World," joked John Fraser, who lives in a condominium off River View Way. He and his wife, Barbara Savage-Fraser, live in Florida for

part of the year and said they didn't realize it was even going up.

"All of a sudden, I was dri-

ving down the hill and saw it," Savage-Fraser said. "My first reaction was, 'Oh my word, what is it?'"

The Frasers live directly across the river from the plant, but because the trees block their

view, they said it doesn't bother them.

"It isn't so bad for us. There hasn't been any construction noise, and we can't

see it at night," Savage-Fraser said.

"It might get worse when the leaves fall."

Julie Edmonds and Mike Saseen live just up the hill from the Frasers.

They also said they weren't bothered by the stack.

"I didn't really notice when the stack went up," Edmonds said.

"There were lights on outside for a few weeks when they were building it. My daughter thought it was a UFO."

For Harold Loso, who lives on Fairview Drive, the upgrades have been "a long time coming," he said. From his property, which Loso's family has owned since the 1930s, a faint humming from the plant can be heard in the distance.

Loso said he doesn't mind the sound or the new stack, which can be seen from his house and the gazebo outside. He said while some people may not want to look at it, there's a price to pay for development.

"Any improvements will be looked forward to," Loso said.

"You've got to have the power, and you can't have it without any adverse effects. That's just how it is."

"Any improvements will be looked forward to. You've got to have the power, and you can't have it without any adverse effects. That's just how it is."

Harold Loso,
Fairview Drive resident