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September 16, 2009

Thomas S. Burack, Chairman
New Hampshire Energy Facility Site Evaluation Committee
New Hampshire Department of Environmental Services
29 Hazen Drive
Concord, NH 03301

**Re: Merrimack Station Electric Generating Facility
SEC Docket No. 2009-01**

Dear Chairman Burack:

I have enclosed an original and nine copies of Public Service Company of New Hampshire's Objection to the Moving Parties' and Peter Bonanno's Motions for Rehearing with regard to the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry Needleman".

Barry Needleman

BN:cb

Enclosure

cc: Service List by email

THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

DOCKET NO. 2009-01

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S OBJECTION TO
THE MOVING PARTIES' AND PETER BONANNO'S
MOTIONS FOR REHEARING**

I. Introduction

The New Hampshire Legislature enacted RSA 125-O:11-18, *et seq.*, the “Scrubber Law”, which requires PSNH to install a wet flue gas desulphurization system (hereinafter “Scrubber”) at Merrimack Station to control mercury and sulfur dioxide emissions from electric generating units MK1 and MK2. The Scrubber Law requires PSNH to install the Scrubber as expeditiously as possible based on the Legislature’s determination that “[t]he installation of such technology is in the public interest of the citizens of New Hampshire and the customers of the affected sources.” RSA 125-O:11,VI.

On March 6, 2009, 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 (collectively, the “Moving Parties”) filed a Motion for Declaratory Ruling with the Site Evaluation Committee (the “Committee”). The Moving Parties asked the Committee to find that the installation of the Scrubber requires a Certificate of Site and Facility because it is a “sizeable addition” under RSA 162-H.

The Committee held an evidentiary hearing on June 26, 2009. On August 10, 2009, the Committee issued its final Order rejecting the Moving Parties’ Motion. The Committee ruled that the construction, installation and operation of the Scrubber and associated facilities at

Merrimack Station does not constitute a sizeable addition under RSA 162-H:5, I, and consequently, that the Scrubber does not require a Certificate of Site and Facility. *Order* at 3-4.

On September 9, 2009, the Moving Parties, as well as Peter Bonanno and Others, (collectively, the “Movants”) filed Motions for Rehearing. The Moving Parties also requested a site visit.¹ The Movants’ Motions offer no basis for reconsideration under RSA 541:3, nor do they demonstrate that the Order is unlawful or unreasonable as required by RSA 541:4 . The Movants do not offer a single example of why the Committee’s decision was unsupported by the factual record. They point to no new authority to support the arguments they raise here. They cite no statutory standards to support their claims that the Committee’s rulings, such as the Committee’s volumetric determination, were contrary to law. Simply put, they ask the Committee to reconsider its Order but offer no proper basis for doing so. As a result, they have completely failed to satisfy the statutory and regulatory requirements concerning Motions for Rehearing. PSNH therefore objects to both Motions and requests that the Committee deny them.

II. Standards for Motion for Rehearing

RSA 541:4 requires that Motions for Rehearing “shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.”

Committee rule 202.29(d) mandates that a party filing a motion for reconsideration satisfy specific criteria:

¹ The Moving Parties request that this Committee conduct a site visit “so that the members can see how sizeable the modifications being made to Merrimack Station are.” *Moving Parties’ Motion* at 3. This request is an improper attempt to reopen the record. According to Committee rules, site inspections may only be conducted if requested by a party, or by the Committee on its own motion, prior to the hearing and if the Committee determines that the site visit will assist the Committee in reaching a determination in the hearing. Site 202.13. Neither the Moving Parties nor the Committee requested a site visit prior to the hearing. Moreover, the purpose of such a visit can only be to introduce new evidence. The Committee’s rules do not permit the introduction of new evidence after the close of evidence unless a party moves the Committee to reopen the record. Site 202.27. The Moving Parties failed to file a motion to reopen the record and are now precluded from filing such a motion because the Committee has already issued its Order. Site 202.27-29

(1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;

(2) Describe how each error cause the committee's decision to be unlawful, unjust or unreasonable, or illegal in respect to jurisdiction, authority or observance of the law, an abuse of discretion or arbitrary unreasonable or capricious;

(3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and

(4) Include any argument or memorandum of law the moving party wishes to file.

Site 202.29(d).

As PSNH will discuss in detail below, the Committee should deny the Movants' Motions because they have failed to meet their burden under each of these standards.

III. Arguments

The Motions for Rehearing raise two issues. First, the Movants assert that the Committee incorrectly found that the Scrubber does not constitute a sizeable addition. *Moving Parties' Motion at 2; Bonanno Motion at 1.* Regarding this point, the Movants collectively assert that this Committee should have reached a different conclusion based on four factors: (1) environmental considerations, (2) the volumetric size increase, (3) the cost of the Scrubber, and (4) the megawatt increase associated with the turbine replacement project. Second, the Moving Parties separately assert that this Committee improperly assessed costs and fees associated with this proceeding to the Moving Parties. *Moving Parties' Motion at 2.*

A. The Factual Record Unequivocally Supports The Committee's Finding That the Scrubber is Not a Sizeable Addition Under RSA 162-H.

The Committee focused on a variety of factors to support its conclusion that the Scrubber is not a sizeable addition. *Order at 9-10.* The Movants focus their challenge on only four points

the Committee considered: environmental issues, volumetric increase, cost and megawatt increase.

1. *Contrary to What They Now Argue, in the Underlying Proceeding the Moving Parties Explicitly Acknowledged that Environmental Issues are Not a Factor in a Sizeable Addition Determination, and They Have Therefore Waived This Issue.*

Both Motions for Rehearing assert that the Committee should have considered environmental issues as part of its sizeable addition analysis. *Moving Parties' Motion* at 3; *Bonanno* at 1. In fact, during the May 8, 2009 hearing, counsel for the Moving Parties raised a host of alleged environmental concerns, *including the precise issues they now raise in their Motion. See Moving Parties' Motion* at 3;² *transcript*, May 8, 2009 at 68-79. Immediately following this argument, the Committee explicitly questioned counsel for the Moving Parties about whether any of those environmental issues should have any bearing on the sizeable addition determination:

VICE CHAIRMAN GETZ: Is it fair to say that your issues were really not directed to whether we have jurisdiction or not in the first instance, but they seem to be more about the issues that we would consider in a proceeding, if we determine that we had jurisdiction and the Applicant needs to get a certificate.

MS. HOFFER: *The issues that I presented today certainly do not relate to the question of whether this is a sizeable addition.*

Id. at 68-69. [Emphasis added].

The record could not be more clear. The Moving Parties discussed at great length all their environmental concerns about the Scrubber, and then explicitly acknowledged that environmental considerations have no bearing on a sizeable addition determination. As a consequence, they unequivocally waived this issue.

² For example, counsel for the Moving Parties alleged that the "FGD system will result in a discharge of wastewater to the Merrimack River that likely will contain mercury." *Transcript*, May 8, 2009, p. 68-79.

The Bonanno parties are similarly bound. The Committee rules allow any potentially aggrieved party to request a rehearing. Site 202.29(a), (b). However, such aggrieved parties do not receive special treatment and are not accorded new and/or superior rights in relation to existing parties. An aggrieved party who had a full and fair opportunity to participate in the initial hearing, and who did not do so, cannot then appear after-the-fact and resurrect issues that are no longer part of the case. Any other conclusion would undercut traditional notions of fairness, well established legal procedures for conducting hearings and would unduly burden PSNH and the Committee.

There can be no dispute that the Bonanno parties had a full and fair opportunity to participate in the process. Notice of the public hearing of the Committee's proceedings was published in both the Union Leader and Concord Monitor newspapers prior to the initial hearing, in accordance with the Committee's notice requirements. In addition, public notice and notification of the PSNH Scrubber project both prior to and after commencement of construction was extensive. Public outreach and communication efforts by PSNH and widespread media interest brought the PSNH Scrubber project to the forefront of public attention in 2008 and 2009, through press releases, print and online reporting, television and radio coverage, legislative, community and municipal briefings, and through publicly available information about the Scrubber project distributed by PSNH and posted on PSNH's web site. The Scrubber project has been the subject of many other state-level administrative, legal, and legislative proceedings and their concomitant public notices, public hearings, public involvement, and media attention.³

³ In addition to the instant docket, such proceedings include NHPUC Docket No. DE 07-108 (PSNH LCIRP); NHPUC Docket No. DE 08-103 (Investigation of PSNH Installation of Scrubber Technology Station); NHPUC Docket No. DE 08-145 (Investigation into Modifications to Merrimack Station); NHPUC Docket No. DE 09-033 (Petition for Approval of the Issuance of Long Term Debt Securities); N.H. Supreme Court Docket No. 2008-897 (Appeal of Stonyfield Farm, Inc.); NHDES Temporary Air Permit Proceeding (Scrubber); NHDES Temporary Air Permit Proceeding (Fiberglass Reinforced Plastic

In addition to state-level proceedings, the Scrubber project was subject to myriad local proceedings. Both the Town of Bow Zoning Board of Adjustment and Planning Board determined PSNH's Scrubber project to be a proposed development of regional impact in accordance with the provisions of RSA 36:54 – 36:58, which resulted in abutter status and specific notice of PSNH's Scrubber project applications pending before those respective Boards (including zoning and site planning issues related to the chimney) being given to the Central and Southern New Hampshire Regional Planning Commissions, and to the abutting Towns of Hooksett, Pembroke and Allenstown. In connection with the regional impact notifications, in August and September of 2008, PSNH met with and gave informational briefings on the Scrubber project to the planning commissions and to the governing bodies of each of the abutter towns, and also supplied information about the Project for review by any interested town residents.

Additionally, and specifically because of the proposed height of the new chimney, in January, 2009, the Bow Planning Board mailed an abutter notification of public hearing for final approval of Phase II of the PSNH Scrubber Project to each of 47 abutting and nearby communities, including the towns of Hopkinton, Allenstown, Pembroke and Hooksett. Despite an abundance of notice and more than adequate opportunity to participate in the permitting process, not a single representative of the governing body of any abutting town, or any of its residents submitted any comments, questions or concerns about the chimney to the Town of Bow officials responsible for locally permitting the Scrubber. Likewise, the Town of Pembroke also specifically informed its residents of the Scrubber project, including the new chimney height, in

Production Process); N.H. Air Resources Council Docket Nos. 09-10, 09-11, and 09-12 (Appeals of Temporary Air Permit); NHDES, Title V Operating Permit for Merrimack Station; Senate Bill 152 (2009); House Bill 496 (2009).

its Fall/Winter 2008 Municipal Newsletter. *See* Exhibit 1 at page 8. It is PSNH's understanding that this newsletter was mailed to all Pembroke residents.

Finally, even if environmental considerations were somehow not barred from review on appeal, the Movants are simply wrong when they assert the Committee did not properly account for them:

because the existing facility is located on a heavily used industrial site, it could not be said that the addition of the Scrubber Project will unduly interfere with the orderly development of the region. Likewise, because the Scrubber Project will be installed in an area of heavy industrial use, there would not appear to be any unreasonable adverse effects that will occur to the aesthetics of the site, historic sites, public health or safety air and water quality or the natural environment. **In fact, the purpose of the construction of the Scrubber Project is to prevent the emission of pollutants into the air.**

Order at 10-11 [emphasis added]. The Scrubber project is a pollution control facility--an environmentally beneficial project by any standard, utilizing the "best known commercially available technology" to reduce SO₂ emissions and mercury by significant amounts.

Likewise, the assertion that the Scrubber project's "environmental, technical, and economic impacts...have not been reviewed in an integrated fashion by any responsible public agency or board" is without merit. Bonanno Motion at 1. RSA 125-O:11, VIII speaks directly to this claim:

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....

2. *Volumetric Increase Has Never Been a Factor In a Sizeable Addition Determination.*

The Moving Parties assert that "this Committee acted arbitrarily in rejecting the Moving Parties' estimates of the three-dimensional size or volume of new structures associated with the Scrubber Project...." *Moving Parties' Motion* at 2. The Moving Parties do not say, as they must, *why or how* the Committee allegedly was arbitrary or erred in its decision. The Moving

Parties further assert, without citation to any authority, that “[i]ncreased 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.” *Id.* Apart from offering nothing that would constitute a basis for the Committee to reconsider its Order, the Moving Parties are wrong.

This Committee has never compared the existing volume of a facility with the proposed expanded volume, and then used that comparison as a factor in a sizeable addition determination. In fact, as the Movants must know, there is no law requiring or authorizing the Committee to undertake such an exercise:

CHAIRMAN BURACK: ...On the volumetric issue that’s been raised, I think it’s important to understand that it has never been an issue – or, a factor before, I should say. Certainly, looking at general dimensions of facilities and structures has been something that’s been looked at. But we really do not have any basis for a comparison from earlier cases. And, I think the testimony that we’ve heard demonstrates the real difficulty in determining what should be included in the numerator and the denominator, if you were to try to make those kinds of determinations.

Transcript, July 7, 2009, p. 69-70. The Moving Parties simply invented the volumetric approach for purposes of this proceeding and then urged the Committee to adopt it. In essence, the Moving Parties are asking the Committee to engage in *ad hoc* rulemaking, contrary to the requirements of RSA Chapter 541-A and Part Site 204 of the Committee’s own regulations. The Committee correctly declined to do so. Having never used such an approach before, it would have been arbitrary and violative of PSNH’s constitutional due process and equal protection rights to use such an approach now.

Even if the Committee had been inclined to accept any evidence on the volumetric increase, the evidence the Moving Parties attempted to offer was so unreliable that it could not possibly form the basis for the Committee to make a reasoned decision. The Committee

correctly determined that “the Moving Parties’ methodology for the calculation of increased volume is not supported by sufficient data.” *Order* at 12. The sole witness at the evidentiary hearing, William Smagula, P.E., of PSNH, testified that the Moving Parties’ volumetric calculations were unreliable:

Q. Thank you. During Mr. Moffett's cross-examination of you, he introduced two new exhibits, Exhibits 8 and 9, that dealt with the volumetric comparisons between the existing structures at Merrimack and the Scrubber Project. Do you recall those?

A. [Smagula] I do.

Q. And, you expressed the view at various points that there were some inaccuracies in those, is that correct?

A. Yes.

Q. Is it your view that there are inaccuracies, errors and omissions in those documents?

A. Yes, it is -- I think it was an attempt to try to create some type of volumetric calculation. Some of the numbers used in the math I believe were incorrect. A number of assumptions made there were incorrect. A number of buildings were omitted from the existing facility. And, there were just quite a few different reasons why the assumptions, and even certain other listings of factors were missing. Another thing is there were a lot of buildings that were removed and they weren't accounted for either -- in any way, whether they were being removed or whether they were being replaced. So, I'm an engineer, and I don't have to have perfection. But this, I believe, does not stand up, in my mind, to anything that resembles a reasonable comparison.

Q. Based on your knowledge of Merrimack Station and the Scrubber Project, do you believe that those exhibits are factually accurate?

A. No.

Transcript, June 26, 2009, p. 186-187. Based on this unrefuted testimony, the Committee properly rejected the Moving Parties’ evidence on this issue. Now, on reconsideration, the Moving Parties offer no support for their novel theory and no facts or law to support their conclusion that the Committee erred in rejecting their arguments.

Finally, although the Moving Parties sought to blame PSNH for the lack of reliable volumetric data, the fault lies solely with them. The Moving Parties were aware long before the evidentiary hearing occurred that PSNH believed volumetric comparisons were arbitrary and should not be considered by the Committee. *Transcript*, June 26, 2009, p. 228. PSNH declined to provide such information based on this position. The Moving Parties could have moved to compel on this issue or sought other relief from the Committee. They also could have used their own expert to try to establish a factual record for the volumetric comparison. They chose not to take either approach, instead opting to perform what amounted to back-of-the-envelope calculations and attempting to introduce their theory via cross-examination. Therefore, their inability to offer any credible evidence at the hearing is purely a result of the choices they made on how to present their case.

In sum, relying upon past precedents, the Committee found that:

[t]he total square footage of the footprint of the facility after installation of the Scrubber Project will increase by 1.8%. When considered against the size of the entire existing site, the increased footprint of the square footage is only .65%.”

Order at 12. At no time during the hearing or at any other point did the Moving Parties offer any evidence to refute the Committee’s reasonable reliance on the data showing that the footprint will only increase by .65% - 1.8%. Rather, they relied exclusively on their never-before used volumetric approach based solely on unsupported evidence, which the Committee properly rejected.

3. *Cost is Not a Determinative Factor in a Sizeable Addition Determination*

The Movants next assert that the “cost” of the Scrubber project makes it a sizeable addition. The Moving Parties claim that “the Committee’s failure to place significant weight on” the cost of the scrubber project is “contrary to governing law, the plain meaning of the statute

and the longstanding interpretation of that law by the Committee.” *Moving Parties’ Motion* at 2. Again, however, they simply make these assertions without citing any supporting law or evidence that the Committee’s interpretation is contrary to its “longstanding interpretation.” The Bonanno parties simply state that, “the cost of the Scrubber Project is estimated at \$457 million, a price tag that we cannot comprehend as being less than ‘sizeable’”, and that the Committee is required by state law to review the economic impacts of the Scrubber Project. *Bonanno Motion* at 1.

It is notable that the Committee’s governing statutes, RSA 162-H, contain no mention of cost as a basis for Committee jurisdiction. RSA 162-H:2 specifies other factors that form the basis for such jurisdiction – generating stations with a capacity of 30 megawatts or more; certain transmission lines of design rating of 100 kilovolts or more; an electric transmission line of design rating in excess of 200 kilovolts – that apply without reference to cost. The Committee correctly rejected the Moving Parties assertion that the cost of the Scrubber should be determinative regarding the sizeable addition analysis: “cost is not a factor that is determinative for the Committee in considering whether any particular addition is sizeable under the statute.” *Order* at 13. That same analysis applies to the assertion of the Bonanno parties on this issue.

Chairman Burack summarized the Committee’s well-reasoned basis for reaching this conclusion:

I just want to address briefly this issue of cost. I generally concur with those who certainly recognize that it’s something that could be considered. My overall sense is that it’s not a useful measure, because it’s really not clear what the comparison would be to. We have had a discussion about the book value issue, which really is, from my perspective, really an – based on an artificial set of accounting rules. And, replacement cost, we’ve had some testimony here that it’s in the range of at least \$2 billion or more. But, I think, most significantly, I believe it’s important that we recognize that cost is really a function of market factors and inflation and things of that kind. And, I think we have to ask ourselves, if the cost of a project that’s already underway suddenly increased, would that project suddenly become sizeable, and therefore subject to our having to take it on in the middle of the review – or, in the middle of the construction process, or at least consider it. And,

from my perspective, I really think that would be unworkable from our perspective. And, I don't think cost is a useful measure here.

Transcript, July 7, 2009, p. 68-69.

The Order correctly captured and relied upon that assessment, as well as other factors:

[a]lthough there is certainly a significant cost associated with construction of the scrubber project (approximately \$457 million dollars), there is no clear yardstick against which to measure proportional costs.

the weakness of using cost as a determining factor is demonstrated by the fact that the project cost is really a function of construction, labor and raw material market factors and other economic factors such as inflation. Because these factors can change prior to or even during the construction process, it is typically not possible to establish a fixed cost for a project as a basis for analysis by the Committee.”

Order at 12-13.

There is no legal requirement that the Committee consider costs or “economic impacts” when making a sizeable addition determination. Nor is there any requirement that the Committee “place significant weight” on such information.

The Movants’ failure to cite any law supporting these assertions is a fatal defect in their arguments. Nor have the Movants refuted the well-reasoned analysis the Committee provided based on evidentiary citations. In fact, the Movants have not met their burden because they cannot meet their burden. There is no support in the statute, prior Committee decisions or any other authority requiring that the cost of a project be considered as a determinative factor in a sizeable addition analysis.

This is especially true for this particular project. The Scrubber project is mandated by law. RSA 125-O:11, et seq. The legislature has determined, as a matter of law, that

- 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.” RSA 125-O:11, V.

- The installation of such technology is in the public interest of the citizens of New Hampshire and the customers of the affected sources. RSA 125-O:11, VI.

- 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, VIII.

The New Hampshire Public Utilities Commission recognized this situation:

Further distinguishing this case is the fact that the Legislature pre-approved constructing a particular scrubber technology at Merrimack Station by finding it to be in the public interest and thereby removing that consideration from the Commission's jurisdiction. *See Investigation of PSNH's Installation of Scrubber Technology at Merrimack Station*, Order No. 24,898 at 13; *Investigation of PSNH's Installation of Scrubber Technology at Merrimack Station*, Order No. 24,914 at 12. As a result, the regulatory paradigm that applies to the Merrimack scrubber installation is fundamentally different from the regulatory paradigm that applied to Seabrook. The Legislature has also retained oversight of the scrubber installation including periodic reports on its cost. See RSA 125-O:13, IX.

PSNH Financing Application, NHPUC Order No. 24,979 (June 19, 2009) at 15.⁴

4. *The Megawatt Increase at Issue Here is Marginal, and Unrelated to the Scrubber.*

The Moving Parties assert, again without any authority, that because the *turbine replacement project* will result in an increase of up to 17.75 megawatts of capacity at the plant, that increase should be a factor in the sizeable addition determination concerning *the Scrubber*. *Moving Parties' Motion* at 2. Aside from the fact that the Movants again fail to cite any law supporting this contention, this assertion is wrong for two reasons. First, for purposes of the sizeable addition analysis there is no linkage between the Scrubber and the turbine replacement project. Second, the Scrubber will actually result in a *decrease* in electrical output at the plant.

⁴ As a result of the Legislature's mandate regarding installation of the Scrubber, the NHPUC decided that in its review of PSNH's financing request it shall not consider evidence concerning whether the use of the financing proceeds for the scrubber is for the public good or whether there are reasonable alternatives to installation of a wet flue gas desulphurization system at PSNH's Merrimack Station. *Id.* at 19.

Regarding the first point, the Moving Parties tried to convince the Committee that the turbine replacement project and the Scrubber should be linked for purposes of the sizeable addition determination. They asserted that the purpose of the turbine project was to offset the “parasitic load” of the Scrubber. *Id.* William Smagula of PSNH testified extensively on this issue. He explained in great detail why the two projects are entirely unrelated. *Transcript*, June 26, 2009, p. 33-50, 61-69. He also specifically addressed the Moving Parties’ arguments claiming that certain PSNH statements somehow prove the two projects should be linked for purposes of the sizeable addition determination. *Id.* at 68-69.

The Committee found Mr. Smagula’s testimony to be credible. *Order* at 6. Based in large part on this testimony, the Committee determined that the two projects were entirely separate. *Order* at 6. The Moving Parties had an opportunity to cross-examine Mr. Smagula on these issues but essentially declined to do so (opting instead to simply place a few letters in the record but never contesting the vast majority of his factual testimony pertaining to this issue). Thus, the substance and credibility of his testimony was unchallenged. Moreover, the Movants have not pointed to any facts the Committee relied upon that were supposedly erroneous. Thus, there is now no basis in fact or law to disturb the Committee’s findings on this issue.⁵

⁵ The New Hampshire Public Utilities Commission recently held:

Achieving an increase of 1.87% to 4.06% in Merrimack’s energy output by replacing a turbine installed in 1968 with a new, more efficient turbine does not change the form or character of Merrimack Station. Such action, moreover, is generally consistent with the federal standard for fossil fuel efficiency adopted in Order No. 24,893. The actions undertaken here by PSNH to change out or replace a turbine – in the same location with turbine of the same form and type, albeit more efficient – are in the nature of normal operation and maintenance activities which do not rise to the level of modification of the Merrimack generation assets, which would require prospective Commission approvals. These activities are not material in size or scope, and they do not equate to the construction or acquisition of new capacity.

Investigation into Modifications to Merrimack Station, Order No. 25,008 (September 1, 2009) at 12.

The Public Utilities Commission also held:

Turning to the second point, even if the Committee had found the two projects were linked for purposes of the sizeable addition analysis, it is uncontested that (1) the Scrubber itself will reduce facility electrical output by 6-13 megawatts; and (2) the turbine replacement project may increase output by up to 17.75 megawatts. *Order* at 10, 15. Taken together, or even focusing only on the turbine replacement, based upon Committee precedent the Committee correctly found that “the increased output of the plant from the new turbine is marginal.” *Order* at 15. The Moving Parties have offered no legal or factual basis for disturbing that conclusion.

B. The Committee Properly Found That the Moving Parties Must Bear All of the Costs of this Proceeding

The Moving Parties challenge the Committee’s finding that they must bear the costs incurred by the Committee as a result of their motion. *Moving Parties’ Motion* at 5. Their position defies the plain meaning of the term “applicant” as well as common sense.

The Moving Parties initiated this proceeding by filing a Motion for Declaratory Ruling. They “applied” to the Committee for relief and invoked the authority of the Committee. PSNH “applied” for nothing. PSNH was involuntarily brought before the Committee based on the Moving Parties’ application for relief. There is no conceivable way to conclude that any entities other than the Moving Parties are the “applicant” here.

At the May 8, 2009 hearing, the Moving Parties argued to the Committee that they were entitled to file their Motion for Declaratory Ruling and commence this proceeding under the

The replacement of the Merrimack turbine increased the efficiency of the unit but the unit will still burn the same fuel as it burned prior to the replacement, and the boiler and fuel cycle are apparently unchanged as a result of this equipment replacement. Accordingly, we find that the replacement of the HP/IP turbine at Merrimack Station does not change the form or character of the generation asset and therefore does not constitute a modification of the plant that requires us to make a prospective determination of the public interest relative to PSNH’s ratepayers.

Id. at 13.

Committee's rules providing that any "person" may seek a declaratory ruling. Site 203.01(a). The Committee agreed with the Moving Parties on this issue (and did not agree with PSNH's objection based on lack of standing). If the Moving Parties qualify as "persons" entitled to bring their Motion, then those same "persons" should be responsible for the fees and costs to address that Motion – especially in a case like this, where but for the Moving Parties unsuccessful efforts, neither the Committee nor PSNH would have had their respective unnecessary expenses.

The statute defines "person" very broadly, to include, among others, any group, firm, partnership, corporation or other organization. RSA 162-H:2, IX. The statutory definition is far broader than the regulatory definition of "applicant" under Site 102.03 upon which the Moving Parties rely. This broad definition of "person" not only encompasses and subsumes the regulatory definition of "applicant," but it clearly covers the Moving Parties, and governs over the regulatory definition.

The Committee's decision regarding the costs here does not mean that PSNH (and ultimately its customers) escape the costs of this proceeding. PSNH has incurred, and continues to incur, its own substantial litigation costs necessitated by the Moving Parties' Motion. It would add insult to injury to increase that burden in a situation where PSNH, relying upon the law and precedent, correctly determined that it was not necessary for the legislatively-mandated Scrubber project to come before this Committee.

IV. Conclusion

The Movants have done nothing more than rehash arguments the Committee previously rejected. They have certainly failed to meet their burden of identifying specific errors of fact, reasoning or law which caused the Committee's decision to be "unlawful, unjust or unreasonable, or illegal in respect to jurisdiction, authority or observance of the law, an abuse of

discretion or arbitrary unreasonable or capricious." Site 202.29(d). *See also* RSA 541:4.

Consequently, the Committee should expeditiously deny both Motions for Rehearing without requiring additional hearings that would merely create additional costs to be borne by all.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON
PROFESSIONAL ASSOCIATION

Date:

9/16/07

By:



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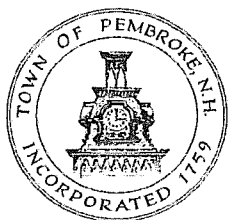
Telephone: (603) 634-2459

Certificate of Service

I hereby certify that the foregoing has been sent via first class mail this date with first class postage prepaid, to the service list in this matter.



Barry Needleman



TOWN OF PEMBROKE MUNICIPAL NEWSLETTER

A Community Newsletter

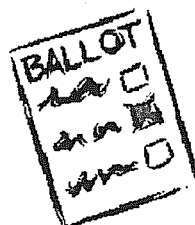
Fall/Winter 2008

ELECTION DAY

Tuesday November 4th

Voting will be held at the Village School on High Street from 7:00 a.m. to 7:00 p.m. You can register to vote at the Town Hall or at the polls on Election Day. You will need a photo ID or drivers license, proof of residency in Pembroke such as a utility bill showing your Pembroke address, proof you are over 18 years old, and proof of citizenship if you are a naturalized citizen.

This is an important part of being a citizen, so make sure you get out to vote!



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WHERE ARE ALL THE SKINNY BOATS COMING FROM?

The annual 2008 New Hampshire Championship Regatta will be held on Saturday, October 11 at 8:30 a.m. at Memorial Field hosted by the Amoskeag Rowing Club. New England schools will compete during the day as well as rowers warming up for the world class Head of the Charles Regatta in Boston. Four hundred rowing shells will run a three-mile stretch of the Merrimack with the finish line near the confluence of the Suncook River. There will be thousands of rowers and spectators spending the day in Pembroke so it should be a busy day for our area businesses. Welcome to Pembroke!!



250

Semiquincentennial 1759 - 2009

How quickly the years go by. Many residents remember the Bicentennial celebrations in 1959 and here we are 50 years later looking forward to the Semiquincentennial! Hope you can join in all the celebrations, don't miss it, you don't want to have to wait until 2059 to celebrate the Tercentennial!

According to newspaper clippings from 1959, the Bicentennial was quite a celebration. There was a parade with Rex Trailer (a big celebrity in the 1950's) and it was estimated that 15,000 came to the parade and enjoyed the festivities afterwards. Another big event was the Bicentennial Ball. A committee has been organized to plan for the 2009 celebration. Stay tuned for further details on the events planned.

The Town of Pembroke
Municipal Newsletter
is produced by the
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Town of Pembroke, NH,
and is delivered to all postal customers.

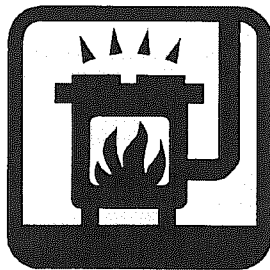
If anyone has an idea
for the newsletter, please call
Linda Williams 485-4747 Ext. 201
or email
lwilliams@pembroke-nh.com.



FROM THE PEMBROKE BUILDING DEPARTMENT

We're approaching the end of summer and heating season will be here soon. Because of the rising cost of heating our homes, many home owners are turning to alternative sources to heat their homes. Many are installing supplemental home heating appliances, such as wood and pellet stoves. It is very important that these appliances are installed and maintained properly to reduce the risk of fire and dangerous accumulation of carbon monoxide in the home. This is the time to have all heating appliances checked for efficient and safe operation.

A permit must be obtained by the installer or home owner before any wood or pellet stove is installed. A permit is also required before any existing heating appliance is modified to burn a different fuel. Some insurance carriers are requiring inspections and approvals from the Town that heating appliances have been installed properly.



I recommend that every home have interconnected smoke detectors with battery backup installed on each floor and in each bedroom. Smoke detectors should be checked monthly and batteries changed annually. A carbon monoxide detector installed in the living area is also recommended.

Remember to check with the building department before any work is started. A permit may be required before starting the work.

For further information or to schedule an inspection of an existing appliance, you can call Everett Hodge at 485-4747 ext 214.

RECREATION NEWS

Regatta

The Amoskeag Rowing Club will be hosting the New Hampshire Championship Regatta at Memorial Field on Saturday, October 11. A sport that is steeped in tradition, spectators can watch the different crews compete for individual and team awards in different divisions. The all-day event is a great family activity to watch together. The Amoskeag Rowing Club (ARC) promotes rowing by fostering the creation of affiliated local high school and college teams including Manchester Central High School Crew, Concord High School Crew the Derryfield School Crew and Southern New Hampshire University Crew. The ARC is a nonprofit organization founded in 1982.

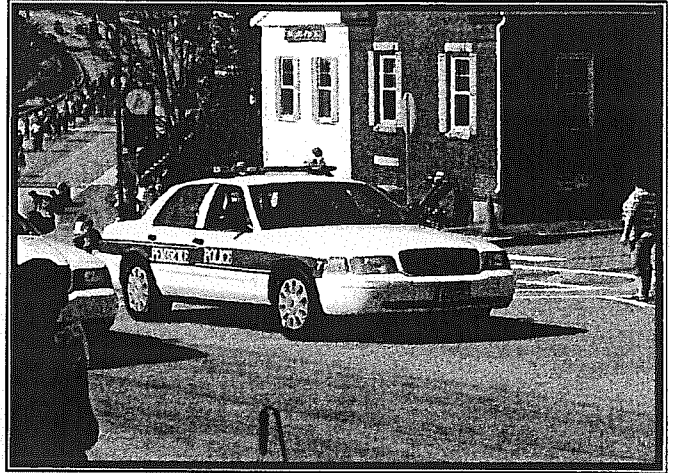
Park Use

Fireplaces at the point have been repaired by CW Masonry of Manchester. They are enjoyed and frequently used by park visitors. When using the fireplaces, please make sure the fire is out and the coals have been soaked with water.

Residents are reminded that dogs are to be LEASHED at all times. It is the dog owner's responsibility to clean up after their dog. Please be considerate of the other people who use the park and pick up immediately after your dog. Two Doggie Bag Stations have been placed at the entrances of the park. We would like to thank all dog walkers who have used these bags to pick up after their dogs. We remind residents that dogs are not allowed inside the fenced ball fields. Thank you for your cooperation.

2008 Old Home Day Parade

Photos by Amanda Alley

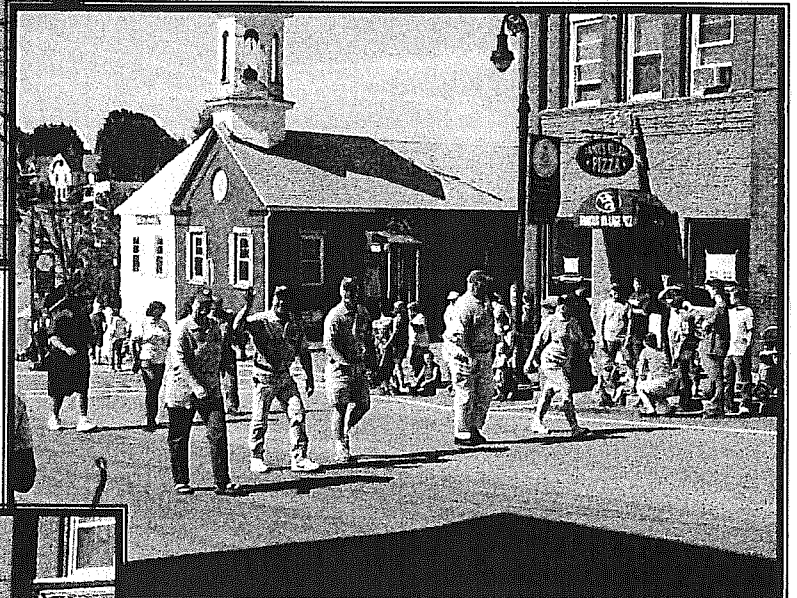


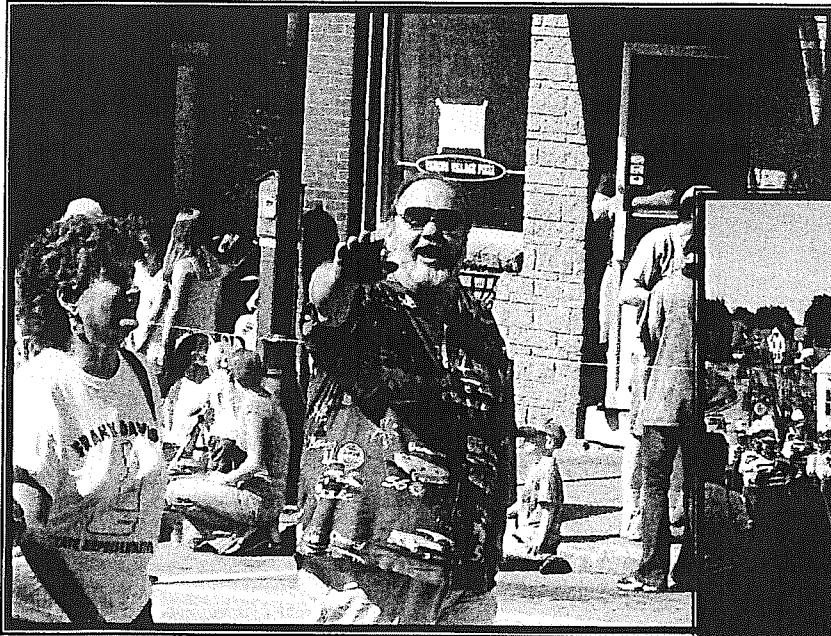
Pembroke Police lead the way



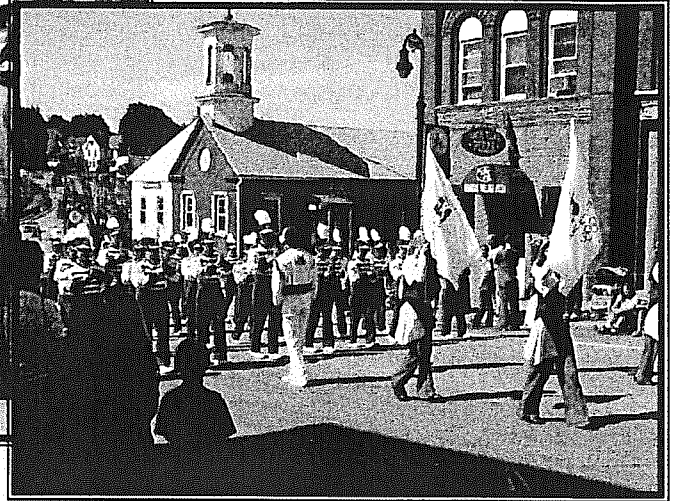
Precision Marching - Pembroke Select Board

Color Guard— Boy Scouts and
American Legion



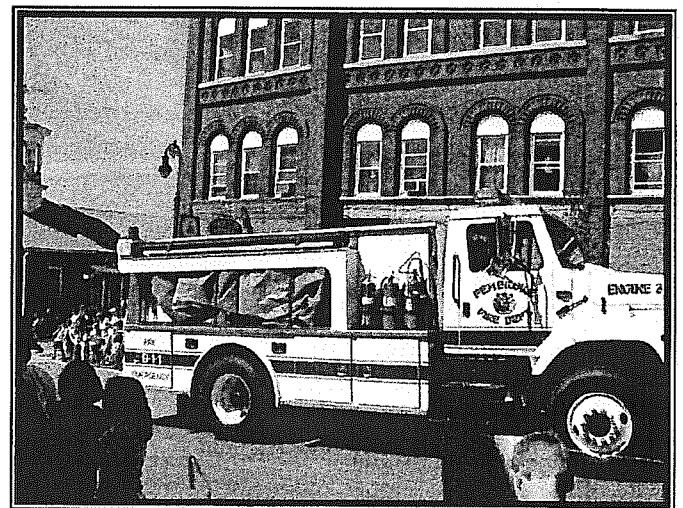
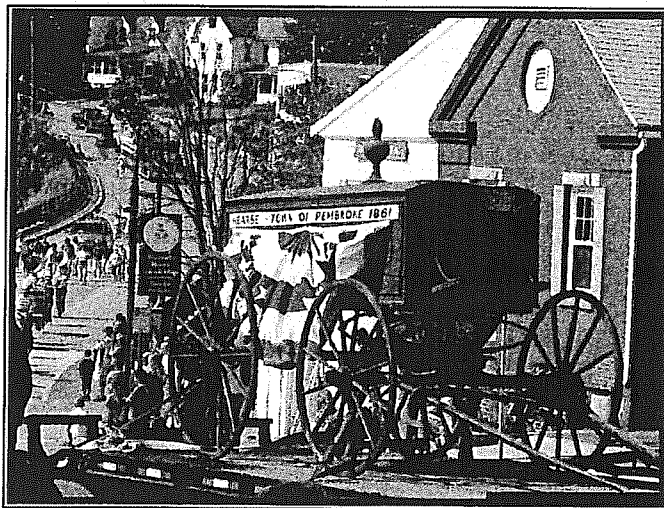


Snappy dressers and
marching bands



Thank you To All!

The Pembroke and Allenstown Old Home Day Committee would like to thank everyone who made this year's celebration another success. Thank you to the Pembroke and Allenstown Board of Selectmen, Police, Fire, and Highway Departments; the Pembroke Recreation Department; all of the merchants and volunteers who helped with the parade and at Memorial Field; and all of the residents who turned out for a great day of fun and reconnecting with friends and family. A big thank you also goes to Associated Grocers of New England for their continued support and wonderful fireworks display. See you next year – August 22, 2009!



Last but never least...Pembroke Fire
Department Trucks

Pembroke M&M's (Moving & Motivated)

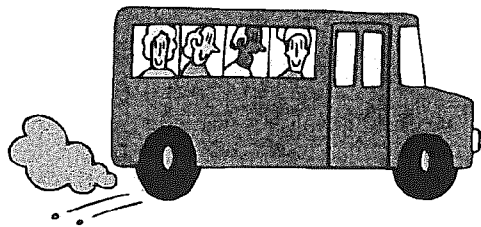
The Pembroke M&M's encourage retirees from Pembroke or surrounding towns to participate in various activities planned throughout the year. Upcoming events scheduled are:

October 8th—Castle in the Clouds

October 22nd—Aviation Museum in Manchester

November 5th—Indian Head, Christmas Show

Call 848-9677 for more information.



SEWER USERS INFORMATION

If you are having problems with your sewer line such as roots, please have your line replaced. It is the property owner's responsibility for the line to the connection at the Town's main. We have several thousand gallons of ground water entering the sewer system every year due to this and sump pumps; your help in taking out this type of ground water would help control the cost at the Treatment Facility.

Some customers have begun using bill payment services. These checks can take up to 5-10 days to reach our office depending on the bill service you are using. When making payments;

Make checks payable to: Town of Pembroke Sewer

Mail Sewer Payments to: 4 Union Street #A, Pembroke, NH 03275

Collection hours to pay in person; Tuesday, Wednesday and Thursday from 9:00 a.m. to 3:00 p.m. at the above address. We also have a payment drop box for your convenience.

The Sewer Commission meets every third Monday of the month at 7:00 p.m. at our office. These meetings are open to the public. Please feel free to call us at 485-8658 with any questions.

Library Lines

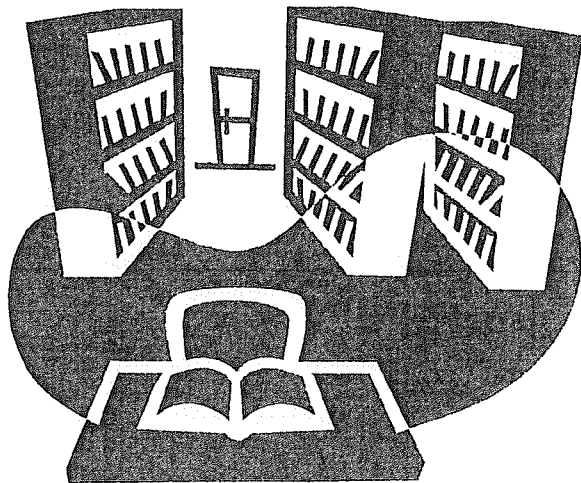
The Pembroke Town Library has continued growing over the last two-and-one-half-years in computer usage, circulation (up over 80%). It has become evident that more hours are needed for the public to access the library. Beginning in September, the library will be open at 10:00AM – 6:00PM on Mondays!

The total hours are as follows:

Monday, Tuesday and Thursday – 10:00AM – 6:00PM
Wednesday – 10:00AM – 7:00AM
Friday – Noon – 4:00PM
Saturday – 10:00AM – 2:00PM

These will be the hours from September through June. July and August are, as before, the summer hours.

Congratulations to our “junior” patrons who did a fantastic job reading this summer and celebrating a G'Day for Reading. It is always wonderful to see how children progresses from the previous year and watching them take off, just devouring books. A healthy appetite for reading is always a good sign! Jonah Mitchell was the winner of the grand prize this year which was a bicycle provided by an anonymous donor. Thanks to all of the parents, grandparents and other family members who play a large role in the success of each reader.



Story times will begin again in September and run through May. Children ages 4 and up will have a story time with a craft on Tuesday mornings at 10:30AM. The themes vary with the season and many are based in a child's favorite subject, nature. Children, age 15 months to 36 months old, are invited to a story time on Wednesday mornings at 10:30AM. Each week will have a theme similar to the Tuesday story times, but with lots and lots of music, a take home item and time to develop friendships. This story time is a lap sit so an adult must accompany these little ones and participate in the fun.

Be sure to stop in and “check out” the library if you are not yet a member. If you have any questions or suggestions, please call the Pembroke Town Library at 485-7851.

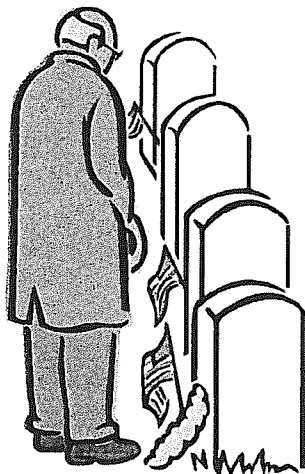
PEMBROKE CEMETERY COMMISSION

Repairs have begun on damaged or tipping monuments in Pembroke's cemeteries. The Cemetery Commission makes an annual inspection of each cemetery and arranges for restoration work when the budget permits. Repair work will continue through September 2008.

To deter vandalism and provide the police with the authority to protect Pembroke's cemeteries during nighttime hours, signs will be placed near the entrance of each cemetery noting that "cemeteries are closed from dusk to dawn."

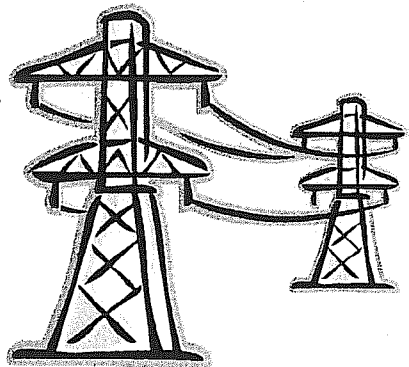
The Commission solicits contributions or bequests to the Cemetery Improvement Fund, administered by the Trustees of Trust Funds. Enlargement of the fund through gifts will provide an endowment for cemetery upkeep and improvement. Such an endowment will relieve the town's cemeteries from dependence on fluctuating town budgets and will keep our historic burial places a source of pride and beauty for the community. Gifts or bequests should be made care of the Pembroke Trustees of Trust Funds and designated for the Cemetery Improvement Fund.

The Commission will remove flags from veterans' graves after Veterans' Day, November 11, 2008, and will replace them before Memorial Day in 2009. The Commission will appreciate knowing of any veteran's grave that is not currently being marked with a flag.



PSNH CLEAN AIR PROJECT

The PSNH power plant in Bow, called the Merrimack Station, is required by State law to reduce emissions by July 2013. They have submitted an application for the project to the Town of Bow Planning Board. Three components comprise the project: a new "scrubber" system which will capture mercury and sulfur dioxide from fuel combustion prior to emission, a new 445' tall chimney that will replace the use of two existing chimneys, and a new waste water treatment facility. Other components such as a 145' tall flue gas desulfurization system, a 160' tall limestone silo, and additional buildings and support structures are part of the project. These changes will result in the Merrimack Station being one of the cleanest coal-burning plants in the nation, with 80% or more capture of emissions.



In Bow, the Zoning Board of Adjustment and Planning Board have been hard at work reviewing material, holding site walks, and conducting public hearings. The project has been proclaimed a development of regional impact, so the Pembroke Planning Department has project materials on file. Bow's next Planning Board meeting is on October 2, 2008 to further discuss and review the project. Please feel free to visit the Planning Department during regular business hours if you would like to review the information.

Proudly our Colors Fly

This program began with a goal of having the flag of the United States of America flying on every utility pole on Route 3—Pembroke Street. Although that has not happened we are pleased with the response of the community for the many flags that are displayed.

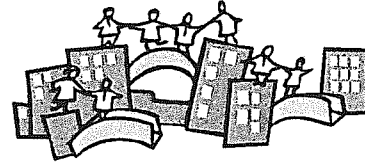
We are now faced, however, with a problem of having to replace all the flag poles as per the instructions from Public Service Company of New Hampshire. They state that the metal poles create a safety issue for the people installing and removing the flags in particular. It is now mandatory to replace and install poles of a nonconductor material such as plastic, fiberglass, or wood.

We would like to continue our salute to all our veterans and all the young men and women from our community who are presently serving in the armed forces.

In the past we have received funds from residents, businesses, churches and organizations. These funds have enabled us to replace damaged flags and poles and to purchase a few new ones. At a cost of \$18.95 per pole the cost to replace them is over \$800. At this time we have only \$200 in our flag funds account.

So once again the Pembroke Woman's Club is asking for help from the community. If you would like to see this program "Proudly Our Colors Fly" continue please send your contributions to the Pembroke Woman's Club in care of Lorette Girard, 181 Gooses Way, Pembroke, NH 03275

We would like to thank Pembroke Fire Fighter, Steve Elliott and the Pembroke Fire Department for their assistance with this project. For further information contact Lorette Girard at 485-7490.



Joint Pembroke Neighborhood Watch

The Police Department relies on the eyes and ears of all of the citizens of town to help us detect criminal activity. As a member of the community you often are quicker to recognize what is out of place than a patrol officer. The Neighborhood Watch Program helps support this philosophy. You can participate by simply joining the Neighborhood Watch E-mail list. The list is private and is not distributed to any other groups. As a member you will get press releases and police logs e-mailed directly to you. You also will get tips within a few short hours if there is criminal activity happening in your neighborhood that the police need help with. To participate, simply contact Chief Scott Lane at slane@pembroke-nh.com or at 485-9173.

PLANNING BOARD

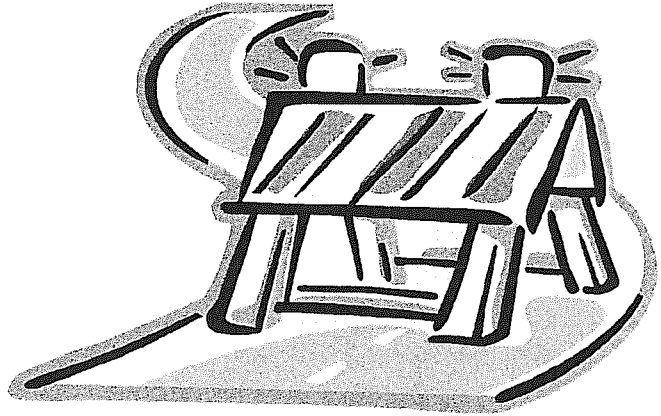
ALTERNATE MEMBER VACANCIES

Join the Planning Board and help guide the development of your community! We have openings for alternate positions and are seeking civic-minded individuals who can commit to meeting twice per month and serve on the occasional subcommittee. The Planning Board meets every second and fourth Tuesday at 7:00 p.m. at the Town Office. Come and visit us at a meeting to hear what issues are before the Board. To fill out a volunteer application contact Linda Williams at the Town Hall 485-4747 Ext. 201.

DEPARTMENT OF PUBLIC WORKS

MOVE OVER LAW

Additions to the State's "Move Over" Law took effect August 5, 2008. The changes provide additional protection to public safety personnel by specifying that motorists are required to slow down and give clearance to stationary vehicles displaying blue, red or amber emergency lights at the scene of a roadside emergency or incident. The changes, which were passed in the 2008 legislative session, are intended to include tow truck operators and highway workers by specifying amber warning lights in the requirement to yield during highway breakdowns, crashes or other incidents. If you see our amber lights and/or those big orange warning signs, please slow down, give clearance and proceed with caution. Roadside work is a dangerous job and by slowing down and using caution you lessen the danger to the road crew and yourself.



WINTER PARKING BAN

The winter parking ban will be in effect from November 1st to April 15th. During this time vehicles are prohibited from parking overnight on the street. Overnight parking is permitted in the municipal parking lots provided you have a valid Facility Permit affixed to your vehicle's windshield.

WINTER SAND FOR RESIDENTS

Residents are welcomed to 2 five gallon buckets per household of salt/sand mix. The salt/sand mix is located in the tan shed on the right just before you enter the Transfer Station gate. This sand mix is strictly for residential use only; no commercial users or businesses will be permitted.

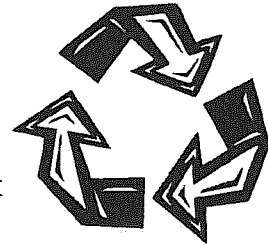
MAILBOXES

The winter months are approaching and soon the snow will be falling. Please remember to clean the snow from in front of your mailbox so the post office can deliver your mail without incident.

TRANSFER STATION UPDATES

PLEASE RECYCLE

The Department of Public Works would like to thank those residents that actively participate in the Town's recycling program and we would also like to remind those who don't recycle that today is a great day to start!



At this time, the Town of Pembroke does not provide curbside recycling and all items must be brought to the Transfer Station. Besides residential trash the Transfer Station accepts appliances, construction and demolition debris, tires and recyclables such as #1 PETE Plastic Bottles (i.e. soda bottles, no caps), #2 HDPE Plastic Bottles (i.e. milk jugs, laundry detergent bottles, no caps), Tin Cans (i.e. food/pet food cans), Glass (i.e. jars, bottles, of any color) Aluminum Cans, Mixed Paper (i.e. cardboard, egg cartons, junk mail, newspapers, magazines, etc.) Waste Oil, Antifreeze, Scrap Metal, Leaves, Brush, Auto Batteries, Cell Phones, PDA's, Rechargeable Batteries, Button Cell Batteries (contain mercury), Fluorescent Light Bulbs (contain mercury), Compact Fluorescent Light Bulbs (contain mercury) Ink Jet Cartridges, Textiles, and Propane Gas Cylinders. Fees are charged for some items such as appliances, gas cylinders and tires.

Pembroke residents that have a facility permit may use the Transfer Station located at 8 Exchange Street (by Memorial Field) on **Tuesdays and Saturdays from 7:30 am to 3:30 pm.**

MERCURY BAN

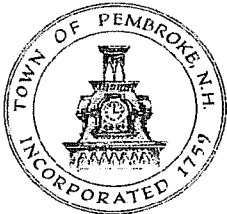
Effective January 1, 2008 New Hampshire State Law HB 416 prohibits the disposal of mercury containing devices at landfills, transfer stations, and incinerators. This means these items may not be disposed of as a solid waste with the "normal" garbage. The ban covers products including: Thermometers, Fluorescent lamps (all shapes and sizes), Thermostats, Mercury button cell batteries, Switches and relays, etc. This ban applies to residents as well as businesses. Any resident with a valid facility permit may bring these items to the Transfer Station and we will recycle them at no cost to you.

CURBSIDE PICKUP

This is a reminder to all residents that curbside pickup should only be **bagged household rubbish**. The containers can neither exceed 40 pounds in weight nor 35 gallons in volume and must be put out by 7:00 am. The Pembroke Public Works Department **will not** pick up microwaves, television sets, miscellaneous appliances, tires, or demolition. These items have to be brought to the Transfer Station located at 8 Exchange Street. Feel free to call 485-4422 with questions.

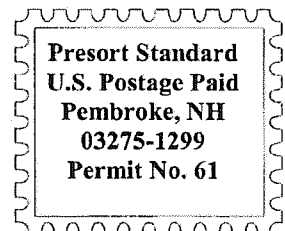
If your rubbish day falls on a holiday your trash pickup day will change for that week, see the schedule below. If your rubbish day **does not** fall on a holiday, nothing changes for you. See the Curbside Holiday Schedule for details.

2008-2009 Pembroke Curbside Pickup Holiday Schedule		
Regular Date	Holiday	Pickup Date
MON 10/13/08	Columbus Day	TUES 10/14/08
TUES 11/11/08	Veterans Day	NO TUES. ROUTE
THUR 11/27/08	Thanksgiving Day	FRI 11/28/08 (Double Route)
THUR 12/25/08	Christmas Day	FRI 12/26/08 (Double Route)
THUR 01/01/09	New Year's Day	FRI 01/02/09 (Double Route)
MON 01/19/09	MLK Jr./Civil Rights Day	TUES 01/20/09
MON 02/16/09	President's Day	TUES 02/17/09
MON 05/25/09	Memorial Day	TUES 05/26/09
FRI 07/03/09	Independence Day	THURS 07/02/09 (Double Route)
MON 09/07/09	Labor Day	TUES 09/08/09
MON 10/12/09	Columbus Day	TUES 10/13/09
WED 11/11/09	Veteran's Day	TUES 11/10/09
THUR 11/26/09	Thanksgiving Day	FRI 11/27/09 (Double Route)
FRI 12/25/09	Christmas Day	THURS 12/24/09 (Double Route)
FRI 01/01/10	New Year's Day	FRI 01/02/10 (Double Route)
*Feel free to cut this schedule out and keep for your reference		



Town of Pembroke
Pembroke Town Hall
311 Pembroke Street
Pembroke, NH 03275

Prosper in Pembroke



POSTAL CUSTOMER
PEMBROKE, NH 03275