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Subject: A U.S. judge ruled that lawsuit by an environmental group over upgrades to Merrimack Station can proceed

CONCORD — A U.S. District Court judge in Concord has ruled that a lawsuit by an environmental group over upgrades to the Merrimack Station coal-fired power plant in Bow can proceed.

Judge Joseph LaPlante on Dec. 4 denied a motion by Public Service of New Hampshire to dismiss a 2011 lawsuit by the Conservation Law Foundation alleging that PSNH violated the federal Clean Air Act by failing to obtain the necessary permits when it upgraded Merrimack Station in 2008 and 2009.

The lawsuit stems from a turbine replacement or modification project designed to improve efficiency and increase output at the power plant, and is not related to the installation of pollution control devices in 2011, known as scrubbers.

The CLF alleges that PSNH in 2008 and 2009 through its "turbine project" added to the volume of pollutants coming from the plant without obtaining necessary permits from the state as required by the Clean Air Act.

PSNH has argued that the Clean Air Act was amended in 2002, and that the amended version eliminated the need for permits for the turbine replacement or upgrade.

"As it turns out, though, New Hampshire had not yet adopted the 2002 amendments to the EPA regulations when PSNH undertook the turbine project," LaPlante wrote in his ruling, "meaning the pre-2002 version was still in force in this state at that time."

The case has been working its way through the courts for the past three years.

"Despite two years of delaying tactics by PSNH that included bringing some of the country's most well-known Clean Air Act lawyers to try to scuttle the case, Judge LaPlante ruled that the foundation of PSNH's arguments cannot bear weight," said CLF spokesperson Karen Wood. "Today's ruling affirms that, despite its position and financial resources, PSNH is not above being held accountable for protecting public health and the environment as dictated by the Clean Air Act."

PSNH spokesman Martin Murray said the utility has already prevailed at the state level, and expects to prevail in federal court now that the case moves to litigation.

"We are very confident of our position going forward," he said. "These are old allegations that the CLF and others made years ago at the state level and our position prevailed throughout all of

those state proceedings at the Air Resources Council and Department of Environmental Services."