

Exhibit 1

Excerpts of Respondent EPA's Response to Petition for Mandamus in
the matter of *In re Sierra Club and Our Children's Earth Foundation*,
Case No .12-1860 (1st Cir.) (Doc. 00116504796)

Case No. 12-1860

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

In re SIERRA CLUB and OUR CHILDREN'S EARTH FOUNDATION,

Petitioners.

RESPONDENT EPA'S RESPONSE TO PETITION FOR MANDAMUS

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administrative record, *id.* § 124.9, and accompanied by a “Fact Sheet” setting forth “the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit,” *id.* § 124.8(a). The Agency provides public notice of its proposed action and invites comment for a minimum of 30 days. *Id.* § 124.6(e). In addition, a public hearing may be held, after 30-days advance, public notice, which may extend the comment period. *Id.* § 124.10(b)(1).

EPA considers the public comments and makes its final permit decision based on the administrative record compiled during these proceedings. *Id.* § 124.15. Together with a final permit, EPA must issue written responses to public comments on the draft permit. *Id.* § 124.17. EPA-issued final NPDES permits are subject to judicial review in federal court following an administrative appeal to EPA’s Environmental Appeals Board. 33 U.S.C. § 1369(b); 40 C.F.R. § 124.19.

II. FACTUAL BACKGROUND

A. Region 1 NPDES Permit Program

The NPDES permit program may be administered by EPA or by states that have sought and obtained authorization to do so from EPA. *See* 33 U.S.C. § 1342(a), (b); 40 C.F.R. pt. 123. Within Region 1, EPA issues NPDES permits to facilities located in Massachusetts and New Hampshire, as well as certain other NPDES permits under various circumstances, and oversees and assists with the NPDES programs administered by Connecticut, Maine, Rhode Island, and Vermont. Decl. ¶ 9. Region

1 is responsible for issuing more major NPDES permits than any other EPA Regional office. *Id.* ¶ 26.

There is currently a backlog of NPDES permits that have been administratively-continued in Region 1 and throughout the United States. *Id.* ¶ 27. EPA has been tracking this backlog since 1999 and is working diligently to address it. *Id.* ¶ 28. Region 1 is working to reduce the backlog by prioritizing the permits of greatest environmental and programmatic significance, while simultaneously not ignoring any individual permit or category of permits, and has made progress in reducing its backlog with this approach. *Id.* ¶¶ 29-30, 34. At present, there is a backlog of approximately 150 administratively-continued permits in Region 1. *Id.* ¶ 30.

NPDES permits for power plants, such as Mt. Tom and Schiller, present a large number of complex, specialized scientific, technical and legal issues. *Id.* ¶¶ 35-64. In addition, the already complicated legal regime has been subject to significant uncertainty due to multiple changes in the applicable national standards. *Id.* ¶¶ 37, 51-55, 72(f), 73(b)-(e).

Despite these many challenges, Region 1 has made significant progress developing NPDES permits for multiple power plants. *Id.* ¶¶ 33, 65-81. These include large plants, *e.g.*, Brayton Point Station, and smaller plants in environmentally sensitive locations, *e.g.*, Kendall Station and the Wheelabrator Saugus facility. *Id.* ¶¶ 67-77. In addition, Region 1 is in various stages of developing permits for a number of other facilities, including, but not limited to, Mt. Tom and Schiller. *Id.* ¶¶ 33, 76, 78-81.

permitting actions, which often required years, provide useful guidance, and show that the 12 months requested by Petitioners is unreasonable. *Id.* ¶¶ 92-93.

The Region must be afforded the time necessary to analyze the complex ecological, technological and economic issues specific to each facility so that it can reach considered results that are appropriately protective of public health and the environment and are not arbitrary, capricious, or an abuse of discretion. *See Sierra Club v. Thomas*, 828 F.2d at 798-99. The time Region 1 is planning to spend evaluating the issues specific to each facility will allow it to make a fully-considered decision and should decrease the chance of future challenges to its ultimate decisions on the merits of the issues. *Id.* In contrast, a rushed and less fully-considered decision is more likely to result in future challenges and increases the risk of a time-consuming remand that will increase the overall time for EPA to implement the statutory scheme. *Id.* The time that Region 1 plans to spend now could well serve to decrease the total time necessary for EPA to implement the statutory scheme. *Id.*; *see also In re United Mine Workers of Am. Int'l Union*, 190 F.3d 545, 555 (D.C. Cir. 1999) (“[T]he agency’s plan may well shorten the overall period of delay by resolving issues that would otherwise become the subject of litigation.”).

Whether the statutory scheme provides a timetable or other indication of the speed with which Congress expects the agency to proceed may inform the “rule of reason” for agency action. *See TRAC*, 750 F.2d at 79-80. Congress provided that NPDES permits be limited to terms of up to five years, 42 U.S.C. § 1342(b)(1)(B), and

Region 1 reasonably requires additional time to complete its review of the complex ecological, technological, and economic issues necessary to issue draft NPDES permits for the two Facilities. *Id.* ¶ 83. Region 1 anticipates that, for the most part, the draft NPDES permits will be ready in spring 2014. However, revisions to the effluent limitations guideline for steam electric power plants are scheduled to be issued by May 22, 2014, pursuant to a judicially entered consent decree. *Defenders of Wildlife v. Jackson*, Case No. 10-cv-01915 (D.D.C). It is reasonable for the draft permits to reflect such revisions; therefore, the Region anticipates that the draft permits will be made available for public comment by June 30, 2014, after it has a chance to consider the application of the new guideline. Decl. ¶¶ 82, 84-86. This will also give concerned persons who might comment on the draft permits the opportunity to consider the effect of the new regulations.

After the close of the comment periods for the two draft permits, Region 1 must consider all the comments, provide written responses to comments, comply with various federal laws applicable to its permit actions, such as the ESA, and take final action on the permits. As explained in the Webster Declaration, based on Region 1's experience in other, similar permit actions, the Region anticipates final action on the Mt. Tom and Schiller NPDES permits by June 30, 2016. *Id.* ¶¶ 82, 88-92, 100-06. EPA's schedule takes into account not only the complex scientific, technical, legal and policy issues presented by NPDES permits for power plants, but also the competing priorities to be addressed by the Region, and the needs of the notice-and-comment

process. *Id.* In contrast, the schedule proposed by Petitioners is unsupported and arbitrary. EPA should be allowed to complete its review in a time frame dictated by sound science and in recognition of other competing priorities.

If the Court dismisses the petition, as EPA believes it should, Petitioners can always renew the petition should EPA take significantly longer than anticipated to complete its work. If the Court believes the right to file a new mandamus petition would be insufficient to protect Petitioners, the case law suggests retaining jurisdiction while the Agency completes its action. *See TRAC*, 750 F.2d at 80; *In re Ctr. for Auto Safety*, 793 F.2d at 1354.

CONCLUSION

For all these reasons, the Court should deny and dismiss the petition for a writ of mandamus.

Respectfully Submitted,

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Dated: March 14, 2013

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Exhibit 2

Excerpts of Declaration of David M. Webster filed by EPA in support of its Opposition to Petition for Mandamus in the matter of *In re Sierra Club and Our Children's Earth Foundation*, Case No .12-1860 (1st Cir.)

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backlogged permit, for example, might be regarded to have greater programmatic significance than a more recently backlogged one. At the same time, no permits can be ignored; all require periodic updating and have some level of environmental significance.

30) Region 1 has made progress toward, but has yet to attain, the 90 percent current goal. As of October 2012, 587 out of the 740 non-stormwater permittees in Massachusetts and New Hampshire (*i.e.*, 79%) were current. *See* Ex. A. Thus, as of that date, 153 permittees had backlogged individual permits which have been administratively continued and need to be addressed by Region 1's NPDES permits office. As of that date, Region 1 would have had to issue permits to 79 additional permittees to have reached the target of 90 percent current target ($740 \times 0.9 = 666$; $666 - 587 = 79$). *Id.* Of course, the number of backlogged permits changes as various permits expire and others are renewed.

31) On February 13, 2013, EPA's Office of Water sent a letter responding to a series of questions posed by Congressman Edward Markey concerning the NPDES permit backlog and particularly the backlog of permits for facilities with cooling water intake structures ("CWISs") subject to CWA § 316(b). *See* Ex. B. EPA reported that its research indicated that approximately 1260 existing facilities nationwide withdraw water from a water body for cooling and are potentially subject to CWA § 316(b). *Id.*, Enclosure A, p. 1.

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EPA indicated that it had detailed information for 871 of these facilities, out of which approximately 28 had been backlogged for 10 years or more. *Id.* at Enclosure A, p. 1, and Enclosure B. A spreadsheet attached to the letter actually shows 29 such facilities. *Id.* at Enclosure B.

32) Of these 29 facilities with permits backlogged for ten years or more, two were identified as having closed or being scheduled for closure (including the Salem Harbor power plant in Region 1). *Id.* Region 1 is aware that two additional facilities that are on the list and within Region 1 have also closed (the Somerset and New Boston power plants in Massachusetts). Out of the 871 facilities for which EPA had detailed information, this leaves 25 facilities nationwide with CWISs that have permits that have been backlogged for more than ten years. Of these 25 permits, six are for power plants in Massachusetts or New Hampshire with permits issued by Region 1. These six include Mt. Tom and Schiller, as well as Canal Station, Merrimack Station, Pilgrim Nuclear Power Station and Newington Station. *Id.*

33) Region 1 previously issued a Final Permit to Canal Station, but then after appeal, withdrew and re-noticed part of the permit because of changes between the Draft and Final Permit resulting from changes in applicable legal requirements. Re-finalizing the permit has become a lower priority for the Region because of the facility's very low level of operations and uncertain future. *See* Ex. C. The Canal Station permit is further discussed

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below. For Merrimack Station, as discussed further below, Region 1 has released a Draft Permit for public comment and is currently working toward final action on the permit. Region 1 is also now moving forward to develop draft permits for Mt. Tom, Schiller and the Pilgrim Nuclear Power Station. These permits are also further discussed below. With regard to Newington Station, Region 1 has gathered certain information to support developing a new permit for the facility, but is not currently making this permit a high priority because of the facility's very low level of operations. *See* Ex. D.

34) The NPDES Permits backlog poses a significant challenge for Region 1 and we have a great deal of work to do. At the same time, we are proud of our efforts and successes. We have reduced our backlog while tackling many complex and challenging industrial and municipal permits. Some of these permits are discussed below. By issuing these permits, we believe that we have achieved significant environmental results despite working in an era of shrinking or static resources, and we know we must continue to do more with less.

V. THE DIFFICULTY OF POWER PLANT PERMITS

35) One important group of major, individual industrial NPDES permits are those issued to power plants. Region 1 writes the permits for 19 power plants in Massachusetts and New Hampshire, and assists the other New England states with their power plant permitting. In my experience, there have

currently working on the responses to comments and final action on the permit and completing this permit action is a high priority for the Region. The facility’s existing permit expired on September 28, 1998, and was administratively extended. GE-Aviation’s Power Plant and jet engine testing facilities both use open-cycle cooling systems and cumulatively withdraw an average of approximately 35 MGD of water from, and discharge waste heat to, the Saugus River. The Draft Permit proposes new, more stringent conditions on thermal discharges under CWA § 316(a) and on cooling water withdrawals under CWA § 316(b). *Id.* Beyond the cooling system issues, the Draft Permit also addresses important and difficult issues involving intermittent discharges of contaminated groundwater from the GE-Aviation facility to the Saugus River. *Id.* After a 120-day public comment period, Region 1 received a large volume of comments on the Draft Permit, primarily from the permittee. The Region is presently considering the comments and its conclusions for the Draft Permit are subject to change based on its continuing review of the issues.

76) ***Merrimack Station.***

a) On September 30, 2011, Region 1 made available for public comment a new Draft Permit for the Merrimack Station power plant in Bow, New Hampshire (“Merrimack”). *See*

<http://www.epa.gov/region1/npsdes/merrimackstation/index.html> (EPA Region 1

Website, last accessed on March 1, 2013). *The Region is currently working on the*

responses to comments and final action on the permit and completing this permit action is a high priority for the Region. This large coal-fired power plant produces 470 MW of electricity and is located along the Hooksett Pool section of the Merrimack River. Like Schiller, Merrimack is owned and operated by Public Service Company of New Hampshire, a subsidiary of the Northeast Utilities System. Merrimack’s existing permit expired on July 27, 1997, and was administratively extended. The facility uses an open-cycle cooling system, taking up to 287 million gallons of water per day (MGD) from the Hooksett Pool section of the Merrimack River for cooling, prior to discharging waste heat and other pollutants to the river. *Id.*

b) In support of the Draft Permit, Region 1 prepared a number of different analyses presenting its initial conclusions on a variety of issues. *See id.* (Fact Sheet, Attachments C and E). For example, the Region’s analysis for the Draft Permit indicated that cooling system operations had contributed to serious adverse effects on aquatic life in river. As a result, the Region has proposed rejecting the permittee’s request for a CWA § 316(a) variance and findings that strict thermal discharge limits were needed to satisfy state water quality standards. Further, based on a BPJ analysis, the Region preliminarily concluded that closed-cycle cooling was the BAT for the facility to control its thermal discharges. In addition, also on a BPJ basis, the Region proposed that under CWA § 316(b), using closed-cycle cooling on a seasonal basis was the

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BTA for the facility to reduce entrainment. *Id.* The Draft Permit includes thermal discharge and cooling water withdrawal limits based on these proposed BPJ determinations of technology-based requirements. *Id.*

c) The Draft Permit also addresses a number of other wastewater discharges from the facility. Most significantly, the permit proposes BAT limits determined on a BPJ basis to control wastewater discharges from the facility's new FGD scrubbers. *Id.* Merrimack has installed a new FGD scrubber system to control its air pollutant emissions, but its control technology results in a wastewater discharge stream including a number of toxic pollutants (*e.g.*, mercury, arsenic and selenium). EPA understands that the facility has been treating this wastewater and trucking it offsite for disposal, but Merrimack has requested authorization to discharge it to the Merrimack River. *Id.*

d) In support of this Draft Permit, Region 1 wrote over 500 pages of supporting analysis in the Fact Sheet and its various attachments and assembled and made available on its website an administrative record of over 800 documents. The Region also had to devote substantial time to responding to several Freedom of Information Act requests related to the permit, which, in turn, also resulted in the need to make various formal Confidential Business Information determinations. After a five-month public comment period, the Region received a tremendous volume (over 1400 pages) of conflicting comments on the Draft Permit from a wide variety of commenters. *See*

<http://www.epa.gov/region1/npdes/merrimackstation/comments.html> (EPA Region 1 Website, last accessed on March 1, 2013). Some argue the Draft Permit is too stringent, while others argue it is not stringent enough, and still others support the permit's proposed requirements. As stated above, the Region is currently working on considering and responding to public comments. The Region's analyses and conclusions for the Draft Permit are, of course, subject to change based on this consideration of public comments and/or any new information. It appears highly likely that this permit will be appealed, once it is issued, given the extensive, opposing comments submitted on the Draft Permit.

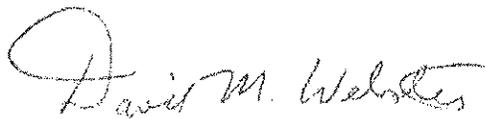
77) ***Russell Biomass.*** On April 16, 2012, Region 1 issued a Final Permit to the proposed Russell Biomass power plant in Russell, Massachusetts. See <http://www.epa.gov/region1/npdes/permits/2012/final/ma00-10371permit.pdf> (EPA Region 1 Website, last accessed on March 1, 2013). The facility applied for an NPDES permit in August 2006, and filed several supplements to the application after various requests for information from Region 1. The proposed new 50 MW power plant is designed to burn wood biomass and use a closed-cycle cooling system with wet cooling towers, resulting in small withdrawals of water (limited to 0.885 MGD) for cooling from, and small discharges of waste heat in the form of cooling tower blowdown (limited to 0.101 MGD monthly average) to, the Westfield River. As a new facility with pollutant discharges, Russell Biomass could not operate without an NPDES

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106) Thus, Region 1 believes that any reasonable schedule must incorporate appropriate flexibilities to allow for adjustments in response to the above-described types of unforeseeable events.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of March, 2013, at Boston, Massachusetts.



David M. Webster, Chief
Water Permits Branch
Office of Ecosystem Protection
US EPA Region 1

Exhibit 3

Collection of representative correspondence and Freedom of Information Act requests regarding EPA's exclusion of PSNH from private settlement negotiations between EPA and Sierra Club concerning PSNH's NPDES Permit for Schiller Station



January 8, 2013

VIA U.S. MAIL & EMAIL

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Re: Request to Participate in Mandatory Pre-Argument Settlement Conference in the Matter of *In re Sierra Club and Our Children's Earth Foundation*, No. 12-1860, U.S. Court of Appeals for the First Circuit

Dear Ms. Chorover, Ms. Dona, and Mr. Sproul:

On behalf of Public Service Company of New Hampshire and Mt. Tom Generating Company, LLC (hereinafter, collectively the "Companies"), please allow this correspondence to serve as the Companies' formal requests to participate in the above-referenced settlement conference set for January 16, 2013. As you know, the Companies have repeatedly requested that they be included in ongoing private settlement negotiations between each of you in the above-referenced matter, as well as in the parallel litigation of *Sierra Club, et al. v. EPA, et al.*, No. 1:12-cv-10902-DPW, currently pending before the U.S. District Court for the District of Massachusetts. To date, you have excluded the Companies from these negotiations and have made no effort to keep them apprised of the discussions.

Petitioners' allegations in the First Circuit matter relate to issuance of renewed NPDES permits for the Companies' respective electric generating facilities. The Companies, as the holders of the NPDES permits, are the entities that will be directly impacted by adjudication or settlement of the petition for a writ of mandamus. The Companies have intervened in the related district-court proceedings because of the potential impact of any settlement or determination. Despite these facts, Petitioners and the Environmental Protection Agency have inexplicably excluded the Companies from ongoing negotiations concerning a settlement that would affect the timeframe for issuance of draft and final NPDES permits for the Companies' facilities. We do not understand why you continue to exclude the Companies from these negotiations concerning their permits. Your exclusion of the Companies from

Ms. Chorover
Ms. Dona
Mr. Sproul
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negotiations and failure to consider their input in this process makes future litigation over a settlement more likely. It is in everyone's interest that the Companies participate in the upcoming mediation.

The Companies respectfully request that the parties reconsider their decision to exclude them from ongoing settlement negotiations and allow the Companies to participate in the upcoming settlement conference so that they may adequately protect their rights.

I look forward to your timely response on this issue.

Sincerely,

*Michael D Freeman by SMT
with permission*
Michael D. Freeman
Attorney for Public Service
Company of New Hampshire

*Seth D Jaffe by SMT with
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Seth D. Jaffe
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cc: The Honorable Judge Patrick King, First Circuit Court of Appeals
Mark Stein, Esq., Environmental Protection Agency, Region 1
Linda T. Landis, Esq., Public Service Company of New Hampshire
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Subject: Re: Request to Participate in Mandatory Pre-Argument Settlement Conference - No. 12-1860, U.S. Court of Appeals for the First Circuit

Mark: As you note, EPA has not included the Companies in the settlement discussions with Sierra Club and Our Children's Earth Foundation on issues related to PSNH's Schiller Station. In fact, EPA has explicitly excluded PSNH despite our many requests to participate and despite EPA's much-touted policy on public transparency. In addition, PSNH has had to file multiple FOIA requests in order to be kept informed about the status of these discussions on our plant.

In addition, your statement that "[n]othing about the possible settlement of the case...alters the Companies' rights in this regard" is incorrect. While we will retain the statutory right to comment on the draft permit for Schiller Station, the length of time we will be allowed in which to prepare those comments is in fact directly impacted by any settlement you reach with the parties in which a limited timeframe is established. We object to a set timeframe prior to the permit even being drafted. You must admit that given the current status of the Schiller permit, this is putting the cart way ahead of the horse--which generally does not end well for either the cart or the horse. I should also mention that it is my understanding that a new permit writer has just been assigned to Schiller Station, one who has never visited the station and has no familiarity with its complex operations.

Although you state the settlement discussions are limited to the timing of the draft permit, we received copies of emails in response to our second FOIA request that indicate the intentions of Sierra Club and Our Children's Earth Foundation to expand proposed settlement terms to include substantive issues (directly related to the draft permit contents).

I would like to take this opportunity to remind you that the requirements and conditions contained in the draft permit directly impact the employees of Schiller Station as well as PSNH customers, and as a result we must be allowed adequate time to evaluate and to respond as we believe necessary. Thus, I reiterate our position that any settlement limiting the timeframe for such comments does in fact impact PSNH-- and explains why we disagree with your statement that "the issues at stake...primarily affect the Federal Government."

Once again, we ask to be included in any discussions and to be kept informed about settlement proposals. Following tomorrow's mediation, I would appreciate your updating our counsel, Mike Freeman at Balch & Bingham. Linda

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Date: 01/15/2013 11:24 AM
Subject: Re: Request to Participate in Mandatory Pre-Argument Settlement Conference - No. 12-1860, U.S. Court of Appeals for the First Circuit

Dear Mr. Freeman and Mr. Jaffe:

Thank you for your joint letter of January 8, 2013, concerning the upcoming Mandatory Pre-Argument Settlement Conference scheduled by the First Circuit's Office of the Settlement Counsel in connection with the case of *Sierra Club, et al. v. EPA, et al.* (Case No. 12-1860). This case concerns the timetable for the United States Environmental Protection Agency's (EPA) development of new National Pollutant Discharge Elimination System (NPDES) permits under the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, for the Mt. Tom Station and Schiller Station power plants in Massachusetts and New Hampshire, respectively. The former facility is owned and operated by Mt. Tom Generating, LLC, while the latter is owned and operated by Public Service Company of New Hampshire (jointly the "Companies").

On the Companies' behalf, you ask to participate in the settlement conference now scheduled for January 16, 2013, and request a reply to your letter from the Government. In your letter, you state that "[t]he Companies, as the holders of the NPDES permits, are the entities that will be directly impacted by adjudication or settlement of the petition for a writ of mandamus." In addition, you express concern that the companies have been "excluded" from the negotiations in the case thus far and complain that the Government "has made no effort to keep them apprised of the discussions." You also note that you moved to intervene in the related case in the District Court for the District of Massachusetts.

You are correct, of course, that EPA has not included the Companies in the settlement discussions among the parties to the cases. The cases allege that EPA has, among other things, unreasonably delayed reissuance of the NPDES permits for the two power plants and seeks a timetable for the development and issuance of the new permits, as well as attorneys' fees and costs. These are issues that primarily affect the Government. The Mt. Tom Station and Schiller Station NPDES permits "expired" 15 and 17 years ago, respectively, but both permits have been administratively continued pursuant to 40 C.F.R. § 122.6(a) so that the facilities may continue to operate according to their terms for as long as it takes for EPA to complete its permitting actions. In addition, EPA must satisfy applicable procedural and substantive requirements in the issuance of the updated permits and the Companies retain their rights to comment on the draft permits and to challenge the final permits if they choose to. Nothing about the possible settlement of the case that is under discussion alters the Companies' rights in this regard.

At the same time, EPA well understands that the Companies are interested in the outcome of this case. As a result, we twice responded on an accelerated basis to Freedom of Information Act requests that you sent us and provided you with copies of proposed settlement agreements exchanged by the parties in the litigation. We also convened a conference call with you to hear your views of the case and its possible settlement. We considered the views you expressed on that call as well as the written comments on the subject provided to us by PSNH in a letter dated November 7, 2012.

Turning to the present issues, we can assure you (1) that you have what is still the latest draft settlement agreement exchanged by the parties, and (2) that EPA and the Petitioners/Plaintiffs in these cases have not agreed upon a settlement to date. With regard to your participation in the First Circuit Settlement Conference, we notified the Settlement Counsel of your request, but we must say that we do not think that the Companies' participation is necessary. We note that the Companies are not parties to the First Circuit case. In addition, as mentioned above, the issues at stake in these cases primarily affect the Federal Government. That said, EPA and the Department of Justice have listened to, and understand, the Companies' views on the issues.

Sincerely,

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Date: 01/08/2013 01:45 PM
Subject: Request to Participate in Mandatory Pre-Argument Settlement Conference - No. 12-1860, U.S. Court of Appeals for the First Circuit

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From: linda.landis@nu.com
Sent: Tuesday, January 15, 2013 3:26 PM
To: stein.mark@epamail.epa.gov
Cc: amy.dona@usdoj.gov; dierker.carl@epamail.epa.gov;
houlihan.damien@epamail.epa.gov; kate.bowers@usdoj.gov;
messier.dawn@epamail.epa.gov; Freeman, Mike; Bharmal, Samina (ENRD); Taylor,
Spence
Subject: Re: PSNH FOIA Requests

Mark: Unfortunately, as a result of EPA's refusal to include us in settlement discussions and the recent decision to exclude us from mediation, PSNH is unwilling at this time to withdraw or to limit the scope of the FOIA request we filed on November 13th. It would be imprudent for us to do so when it is apparently only through the FOIA process that we can stay informed about discussions and negotiations specifically related to our plant that are taking place between EPA and adversarial parties. I hope you understand our position. I am willing to discuss this further with you. Linda

Linda T. Landis, Senior Counsel
Legal Department
Public Service Company of NH
780 No. Commercial Street
Manchester, NH 03101
(603)634-2700
Fax (603)634-2438

From: Stein.Mark@epamail.epa.gov
To: Linda T. Landis/NUS@NU
Cc: amy.dona@usdoj.gov, kate.bowers@usdoj.gov, mfreeman@balch.com, "Bharmal, Samina (ENRD)" <samina.bharmal@usdoj.gov>, "Taylor, Spence" <staylor@balch.com>, Messier.Dawn@epamail.epa.gov, houlihan.damien@epamail.epa.gov, Dierker.Carl@epamail.epa.gov
Date: 01/15/2013 03:36 PM
Subject: Re: PSNH FOIA Requests

Hi Linda - I have received your FOIA request dated January 9, 2013, as well as a copy of the parallel request that you sent to DOJ, concerning settlement negotiations between the Federal Government and the Sierra Club and Our Children's Earth Foundation pertaining to the law suits these groups have filed against EPA concerning the Schiller Station and Mt. Tom Station NPDES permits. As was the case with our response to your prior, related FOIA requests, I need to consult with DOJ concerning how EPA should respond to your requests in light of the litigation context here and the possibly overlapping nature of the potentially responsive records that EPA and DOJ may have. I am currently pursuing that consultation with DOJ.

In the meantime, I want to assure you, as indicated in my email from earlier today, that the draft of a proposed settlement agreement that I sent you on November 15, 2012 (in partial response to your November 13, 2012, FOIA request), remains the most recent draft exchanged between the parties to the litigation.

Finally, on January 7, 2013, I sent you an email asking whether you would be willing to withdraw your FOIA request sent to EPA on November 13, 2012 (FOIA Request No. EPA-R1-FOI-2013-001359) in light of (1) the fact that I earlier sent you the draft of the proposed settlement agreement and certain related correspondence, (2) the additional fact that on December 20, 2012, DOJ responded to the parallel FOIA request that you sent to the Department, and (3) my conclusion that EPA does not have any records responsive to your FOIA request that DOJ does not also have and, therefore, would already have dealt with in its response. Thus, further efforts to respond to this FOIA by EPA will use our scarce resources but will produce only redundant information for you. As of yet, you have not yet responded to my request. Therefore, I am reiterating it at this time.

Thank you for your attention to this matter.

Sincerely,

Mark A. Stein

Mark A. Stein
U.S. Environmental Protection Agency
New England Region
5 Post Office Square – Suite 100 (ORA 18-1)
Boston, MA 02109-3912

Tel.: (617) 918-1077
E- Fax: (617) 918-0077

linda.landis--01/09/2013 11:57:36 AM---Mark: Please see the attached letter, basically reiterating our November FOIA request for document

From: linda.landis@nu.com
To: Mark Stein/R1/USEPA/US@EPA
Cc: amy.dona@usdoj.gov, kate.bowers@usdoj.gov, mfreeman@balch.com, "Bharmal, Samina (ENRD)" <samina.bharmal@usdoj.gov>, "Taylor, Spence" <staylor@balch.com>
Date: 01/09/2013 11:57 AM
Subject: PSNH FOIA Request

Mark: Please see the attached letter, basically reiterating our November FOIA request for documents (but with a revised timeframe) related to ongoing settlement negotiations between Sierra Club /Our Children's Earth Foundation and EPA regarding PSNH's Schiller Station and its NPDES permit.
We would appreciate a prompt response. Thanks very much. Linda

Linda T. Landis, Senior Counsel
Legal Department
Public Service Company of NH
780 No. Commercial Street
Manchester, NH 03101
(603)634-2700
Fax (603)634-2438

This e-mail, including any files or attachments transmitted with it, is confidential and/or proprietary and is intended for a specific purpose and for use only by the individual or entity to whom it is addressed. Any disclosure, copying or distribution of this e-mail or the taking of any action based on its contents, other than for its intended purpose, is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately and delete it from your system. Any views or opinions expressed in this e-mail are not necessarily those of Northeast Utilities, its subsidiaries and affiliates (NU). E-mail transmission cannot be guaranteed to be error-free or secure or free from viruses, and NU disclaims all liability for any resulting damage, errors, or omissions. *****[attachment "3569_001.pdf" deleted by Mark Stein/R1/USEPA/US]



**Public Service
of New Hampshire**

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Linda.landis@nhi.com

The Northeast Utilities System

Linda T. Landis
Senior Counsel

August 31, 2012

VIA U.S. MAIL

FOIA Coordinator
Law and Policy Section
Environment and Natural Resources Division
Department of Justice
P.O. Box 7415, Ben Franklin Station
Washington, D.C. 20044-7415

Re: Freedom of Information Request

Dear FOIA Coordinator:

Public Service Company of New Hampshire ("PSNH") is filing this request for information pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and the U.S. Department of Justice's ("DOJ") FOIA regulations at 28 C.F.R. Part 16. This FOIA request has been triggered by the lawsuit filed by Sierra Club and Our Children's Earth Foundation against the Environmental Protection Agency ("EPA") (*Sierra Club, Inc., et al v. United States Environmental Protection Agency, et al.*) (the "Lawsuit") regarding Schiller Station, owned and operated by PSNH, in Portsmouth, New Hampshire, and its National Pollutant Discharge Elimination System ("NPDES") permit, necessitating PSNH to seek the following information:

Any and all communications, including any records or other documentation thereof from January 1, 2011, to the present date between the DOJ and any person, group of persons, organization, or other entity regarding, relating to, mentioning, inquiring about, or otherwise making reference to, any NPDES Permit for the facility known as Schiller Station located in New Hampshire and owned and operated by PSNH. For purposes of this request, "NPDES Permit" includes any expired NPDES permit, past or current Draft NPDES Permit, and any version of a Final NPDES Permit not yet issued. For purposes of this request, "DOJ" includes the agency itself as an official unit of government, the DOJ's Environment and Natural Resources Division, and any person or group of persons employed thereby, specifically including but not limited to DOJ's Trial Attorneys in the Lawsuit. For purposes of this request, "person, group of persons, organization, or other entity" specifically includes but is not limited to the Sierra Club, Our Children's Earth Foundation, any person or group of

persons employed thereby or otherwise affiliated therewith, and any national or local office, agent, attorney, or other representative thereof.

PSNH is aware, pursuant to conversations with Attorney Amy Dona (DOJ) and Attorney Mark Stein (EPA Region 1) and recent filings made with the district court that discussions regarding Schiller Station have taken place between the parties. Furthermore, a court filing (see Attachment) indicates the DOJ's intention to pursue settlement discussions with Sierra Club and Our Children's Earth Foundation over the next 90 days regarding the Schiller Station NPDES permit, while excluding PSNH, despite the fact that PSNH as owner and operator of the station would be most directly impacted by any settlement agreement and had requested to be included in these discussions. This would seem to be in conflict with EPA Administrator Lisa Jackson's commitment to upholding the values of transparency and openness: "The conduct of litigation by the Agency should reflect the principles of fairness and openness that apply to other EPA activities." See Lisa P. Jackson, Memorandum on Transparency in EPA's Operations (April 23, 2009).

Should DOJ identify records which are responsive to this request but which DOJ believes to be exempt from disclosure under FOIA, we request that, in light of President Obama's policies encouraging a "presumption of openness" and "discretionary disclosure," see Attorney General Eric H. Holder, Memorandum for Heads of Executive Departments and Agencies, The Freedom of Information Act (Mar. 19, 2009), DOJ use its discretion under 40 C.F.R. § 16.1(a) to nonetheless disclose any such records. This also would be consistent with Administrator Jackson's Transparency Memorandum, which states: "Offices should assert an exemption to disclosure only where the Agency reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law." (Jackson Memorandum, *id.*) The only interests harmed by nondisclosure in this particular set of circumstances would be those of PSNH.

Should DOJ choose not to disclose such discretionary records, PSNH requests that DOJ provide a descriptive index of withheld records consistent with that required in FOIA litigation under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir.1973), *cert. denied*, 415 U.S. 977 (1974).

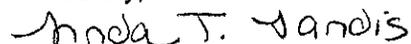
Since a recent court filing, as referenced above, indicates that DOJ/EPA plans on proceeding with settlement discussions concerning Schiller Station without PSNH's participation, PSNH requests that this FOIA request be considered to be an ongoing request for information through the end of 2012. If this request is not honored, we will file amended FOIA requests as needed.

For the purposes of this request, "records" includes all books, papers, maps, photographs, machine readable materials, electronic materials, or other documentary materials, regardless of physical form or characteristics, including all communications, letters, memoranda, notations, copies, e-mails, diagrams, studies, charts, minutes, tables, spreadsheets, formulas, directives, observations, impressions, proposals, contracts, letters, messages, mail, drafts, and tapes in the possession of EPA or its legal department. See 44 U.S.C. § 3301.

PSNH will pay the applicable fees for this request up to \$3000.00. Please contact me for authorization to spend more than this amount ahead of time should your response costs exceed this amount.

Since time is of the essence in monitoring ongoing discussions about our plant, and the loss of substantial rights are implicated by PSNH's exclusion from discussions and any potential settlement, we request that this information be provided promptly and no later than the timeframes set by law. Please contact me if you need any clarification or other information to process this request as soon as such a need should arrive.

Sincerely,

Handwritten signature of Linda T. Landis in black ink.

Linda T. Landis
Senior Counsel

Cc: Attorney Amy Dona, Department of Justice
Attorney Mark Stein, EPA Region 1
Curt Spalding, Regional Administrator, EPA Region 1
David Webster, EPA Region 1
Michael D. Freeman, Esq., Balch & Bingham
Spencer M. Taylor, Esq., Balch & Bingham
Tal Simpson, Esq., Balch & Bingham
James Christman, Esq., Utility Water Act Group
John M. MacDonald, PSNH, Vice President-Generation
William H. Smagula, P.E., PSNH, Director-Generation
Richard Despina, PSNH, Schiller Station

1 Christopher A. Sproul
 2 Environmental Advocates
 3 5135 Anza Street
 4 San Francisco, California 94121
 5 Telephone: (415) 533-3376
 6 E-mail: csproul@enviroadvocates.com
 7 *Admitted pro hac vice*

8 Patricia Weisselberg
 9 Law Office of Patricia Weisselberg
 10 115 Oakdale Avenue
 11 Mill Valley, California 94941
 12 Telephone: (415) 388-2303
 13 E-mail: pweisselberg@wans.net
 14 *Admitted pro hac vice*

15 Attorneys for Plaintiff
 16 Our Children's Earth Foundation

17 Nora Chorover (Bar No. 547352)
 18 Stern Shapiro Weissberg & Garin LLP
 19 90 Canal Street
 20 Boston, Massachusetts 02114 - 2022
 21 Telephone: (617) 742-5800 ext. 135
 22 E-mail: nchorover@sswg.com

23 Attorney for Plaintiffs
 24 Sierra Club and Our Children's Earth Foundation

25 UNITED STATES DISTRICT COURT
 26 DISTRICT OF MASSACHUSETTS

27 SIERRA CLUB and OUR CHILDREN'S EARTH
 28 FOUNDATION,

Civil Case No. 1:12-cv-10902

Plaintiffs,

JOINT MOTION AND SUPPORTING
 MEMORANDUM FOR A STAY OF
 LITIGATION

v.

UNITED STATES ENVIRONMENTAL
 PROTECTION AGENCY, LISA JACKSON, as
 Administrator of the United States Environmental
 Protection Agency; and CURT SPALDING, as
 Regional Administrator of the United States
 Environmental Protection Agency, Region 1,

Defendants.

1 Plaintiffs, Sierra Club and Our Children's Earth Foundation, and Defendants, U.S.
2 Environmental Protection Agency, Lisa Jackson, and Curt Spalding (collectively "EPA"), file this joint
3 motion and supporting memorandum for a stay of litigation in this case for 90 days, until November 21,
4 2012, while plaintiffs and EPA (collectively, "the Parties") pursue settlement discussions. In support of
5 this motion, the Parties state as follows:

6 1. Plaintiffs' Amended Complaint sets forth three claims for relief, one under the Administrative
7 Procedure Act ("APA"), 5 U.S.C. § 706(1), and two under the Clean Water Act ("CWA"), 33 U.S.C. §
8 1365(a). Each claim involves CWA National Pollutant Discharge Elimination System ("NPDES")
9 permits issued by EPA to the Mt. Tom Station power plant in Massachusetts ("Mt. Tom Station") and
10 the Schiller Station power plant in New Hampshire ("Schiller Station"). Plaintiffs seek an injunction to
11 compel EPA to review and revise these NPDES permits, and a judgment declaring those permits not
12 administratively extended under the CWA. Dkt. # 9.

13
14 2. On August 7, 2012, EPA filed a motion to dismiss and supporting memorandum, pursuant to
15 Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). EPA's motion seeks to dismiss the Amended
16 Complaint for lack of subject matter jurisdiction, or in the alternative, for failure to state a claim.
17 Dkt.#'s 11, 12. Plaintiffs' opposition to EPA's motion to dismiss is currently due to be filed August 24,
18 2012. Dkt. # 24.

19
20 3. Mt. Tom Generating Company LLC, which operates Mt. Tom Station, and Public Service
21 Company of New Hampshire, which operates Schiller Station, have moved to intervene and have filed
22 provisional motions to dismiss. Dkt. #'s 16, 17, 18, 20. The Court has not yet addressed the motions to
23 intervene or the provisional motions to dismiss.

24
25 4. Plaintiffs have also filed an original action in the First Circuit under CWA section 509(b)(1)(F),
26 arguing unreasonable delay with respect to the NPDES permits at issue in this case. See In re: Sierra
27
28

1 Club, No. 12-1860 (1st Cir. filed July 9, 2012). Plaintiffs intend to file contemporaneously with this
2 motion, a motion to stay proceedings in the First Circuit action.

3 5. Plaintiffs and EPA have initiated negotiations to resolve the issues involved in this matter and in
4 the First Circuit action without the need for further litigation. If successful, these negotiations will
5 obviate Plaintiffs' need to file an opposition to EPA's motion to dismiss, as well as the need for the
6 Court to address Mt. Tom Generating Company LLC's and Public Service Company of New
7 Hampshire's motions to intervene and provisional motions to dismiss. Considerations of judicial
8 economy and efficiency favor granting the foregoing relief. Furthermore, the Parties agree that their
9 interests would be best served by focusing their resources on settlement discussions rather than further
10 briefing. This motion is not submitted for the purposes of delaying the proceedings in this case or for
11 any other improper purpose.
12

13 6. For the foregoing reasons, the Parties jointly move for entry of an order staying these
14 proceedings for 90 days, through November 21, 2012. If and when the stay is lifted, the parties propose
15 that Plaintiffs have ten (10) days to file their opposition to EPA's motion to dismiss and that the Parties
16 be given ten (10) days to respond to movant-intervenors' motions to intervene. The Parties will propose
17 a schedule to respond to movant-intervenors' provisional motions to dismiss in the event that
18 intervention is granted.
19

20 7. Counsel for Plaintiffs have contacted counsel for movant- intervenors Mt. Tom Generating
21 Company LLC and Public Service Company of New Hampshire, who do not currently have party status
22 in this action. Movant-intervenor PSNH opposes the joint request for a stay; movant-intervenor Mt.
23 Tom declined to take any position prior to seeing the joint request.
24

25 **CONCLUSION**

26 For the foregoing reasons, the Parties' motion should be granted.
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Respectfully submitted,

Dated: August 23, 2012

/s/ Patricia Weisselberg
Patricia Weisselberg
115 Oakdale Avenue
Mill Valley, CA 94941
(415) 388-2303
pweisselberg@wans.net
admitted pro hac vice
Attorney for Plaintiff
Our Children's Earth Foundation

Dated: August 23, 2012

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

/s/ Amy J. Dona
AMY J. DONA
Environment & Natural Resources Division
Environmental Defense Section
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Telephone: (202) 514-0223
Fax. No.: (202) 514-8865

Certificate of Service

I hereby certify that this document, JOINT MOTION AND SUPPORTING MEMORANDUM FOR A STAY OF LITIGATION, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). There are no non-registered participants.

By: /s/ Patricia Weisselberg
Patricia Weisselberg
115 Oakdale Avenue
Mill Valley, CA 94941
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pweisselberg@wans.net
Admitted pro hac vice

Attorney for Plaintiff
Our Children's Earth Foundation



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Linda.landis@nu.com

The Northeast Utilities System

Linda T. Landis
Senior Counsel

November 7, 2012

VIA U.S. MAIL & EMAIL

Kate Bowers, Esq.
Law and Policy Section
Environment and Natural Resources Division
Department of Justice
P.O. Box 7415, Ben Franklin Station
Washington, D.C. 20044-7415

Re: Freedom of Information Request

Dear Attorney Bowers:

Public Service Company of New Hampshire ("PSNH") files this request for information pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and the U.S. Department of Justice's ("DOJ") FOIA regulations at 28 C.F.R. Part 16. This FOIA request, directed to you pursuant to our recent conversation, is a follow up to the FOIA request PSNH filed with DOJ on or around August 31, 2012, seeking certain information related to the lawsuit filed by Sierra Club and Our Children's Earth Foundation ("OCEF") in the United States District Court for the District of Massachusetts against the Environmental Protection Agency ("EPA") (Sierra Club, Inc., et al. v. United States Environmental Protection Agency, No. 1:12-cv-10902-DPW), regarding the issuance of a new National Pollutant Discharge Elimination System ("NPDES") permit by EPA for PSNH's Schiller Station, located in Portsmouth, New Hampshire.

In addition to the district court case referenced above, Sierra Club and OCEF have also filed with the U.S. Court of Appeals for the First Circuit a petition for writ of mandamus (In re: Sierra Club, Inc., et al., No. 12-1860), seeking similar relief to that sought in the above-referenced district court action. PSNH is aware that the parties to these lawsuits are considering and actively discussing settlement. In fact, PSNH, as a proposed-intervenor in the district court matter, has repeatedly requested to be a party to these ongoing settlement negotiations but has been prohibited from doing so despite the fact that PSNH, as owner and operator of Schiller Station, would be most directly impacted by any settlement agreement ultimately reached between the parties. Therefore, consistent with PSNH's August 31, 2012 FOIA request, these lawsuits have necessitated that PSNH seek certain information related to settlement negotiations in these cases. Specifically, the instant FOIA request seeks the following agency records:

Any and all communications and correspondence, including any documents attached thereto or enclosed therewith, from August 1, 2012, to the date on which DOJ deems this request to be received, between DOJ, including but not

limited to any DOJ attorney or staff, and any attorney, employee, or other agent or representative of the Sierra Club or OCEF regarding or relating to any potential settlement in either of the two cases referenced above (hereinafter "Settlement Communications"). The Settlement Communications we seek specifically include any and all requests, proposals, negotiations, agreements or other discussions by any party named above relating to PSNH's NPDES permit or Schiller Station.

This FOIA request seeks any agency "record," as that term is broadly defined under federal law,¹ to specifically include not only paper and electronic writings, but any recorded phone conversations, meeting notes, and any other type of memorialization of a communication fitting the description above. Please note that this FOIA request does not seek any record previously provided by DOJ to PSNH, pursuant to PSNH's August 31, 2012 FOIA request.

Should DOJ identify records which are responsive to this request but which DOJ believes to be exempt from disclosure under FOIA, we respectfully request that, in light of President Obama's policies encouraging a "presumption of openness" and "discretionary disclosure" (see Attorney General Eric H. Holder, Memorandum for Heads of Executive Departments and Agencies, The Freedom of Information Act (Mar. 19, 2009)), DOJ use its discretion under 40 C.F.R. § 16.1(a) to nonetheless disclose any such records. Should DOJ choose not to disclose such discretionary records, we further respectfully request that DOJ provide a descriptive index of withheld records consistent with that required in FOIA litigation under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir.1973), *cert. denied*, 415 U.S. 977 (1974).

PSNH is willing to pay the applicable fees for this request up to \$300.00 without further authorization. Please give me a call if I can clarify or facilitate this response in any way. I would certainly appreciate an expedited response since settlement discussions are ongoing. Thank you for your assistance.

Sincerely,

Linda T. Landis

Linda T. Landis
Senior Counsel
Public Service Company of New Hampshire

cc: Ms. Samina Bharmal, Esq., DOJ
Ms. Amy Dona, Esq., DOJ
Mr. Mark Stein, Esq., EPA Region 1
Mr. Michael D. Freeman, Esq., Balch & Bingham LLP
Mr. Spencer M. Taylor, Esq., Balch & Bingham LLP

¹ FOIA defines "record" as including "any information that would be an agency record subject to the requirements of [the FOIA] when maintained by an agency in any format, including an electronic format." 5 U.S.C. § 552(f)(2). The Federal Records Act further defines "records" as including "all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency . . ." 44 U.S.C. § 3301.



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**Linda T. Landis
Senior Counsel**

January 9, 2013

VIA U.S. MAIL & EMAIL

Kate Bowers, Esq.
Law and Policy Section
Environment and Natural Resources Division
Department of Justice
P.O. Box 7415, Ben Franklin Section
Washington, D.C. 20044-7415

Re: Freedom of Information Request

Dear Attorney Bowers:

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In addition to the district court case referenced above, Sierra Club and OCEF have also filed with the U.S. Court of Appeals for the First Circuit a petition for writ of mandamus (In re: Sierra Club, Inc., et al., No. 12-1860), seeking similar relief to that sought in the above-referenced district court action. PSNH is aware that the parties to these lawsuits are considering and actively discussing settlement. In fact, PSNH, as an intervening party in the district court matter, has repeatedly requested to be a party to these ongoing settlement negotiations but has been precluded from doing so despite the fact that PSNH, as owner and operator of Schiller Station, would be most directly impacted by any settlement agreement ultimately reached between the parties. Therefore, consistent with PSNH's August 31 and November 7, 2012 FOIA requests, these lawsuits have necessitated that PSNH seek certain information related to settlement negotiations in these cases. Specifically, the instant FOIA request seeks the following agency records:

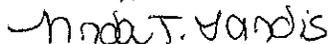
Any and all communications and correspondence, including any documents attached thereto or enclosed therewith, from November 8, 2012, to the date on which DOJ deems this request to be received, between DOJ, including but not limited to any DOJ attorney or staff, and any attorney, employee, or other agent or representative of the Sierra Club or OCEF regarding or relating to any potential settlement in either of the two cases referenced above (hereinafter "Settlement Communications"). The Settlement Communications we seek specifically include any and all requests, proposals, negotiations, agreements or other discussions by any party named above relating to PSNH's NPDES permit or Schiller Station.

This FOIA request seeks any agency "record," as that term is broadly defined under federal law,¹ to specifically include not only paper and electronic writings, but any recorded phone conversations, meeting notes, and any other type of memorialization of a communication fitting the description above. Please note that this FOIA request does not seek any record previously provided by DOJ to PSNH, pursuant to the PSNH's August 31 and November 7, 2012 FOIA requests.

Should DOJ identify records which are responsive to this request but which DOJ believes to be exempt from disclosure under FOIA, we respectfully request that, in light of President Obama's policies encouraging a "presumption of openness" and "discretionary disclosure," (see Attorney General Eric H. Holder, Memorandum for Heads of Executive Departments and Agencies, The Freedom of Information Act (Mar. 19, 2009)), DOJ use its discretion under 40 C.F.R. § 16.1(a) to nonetheless disclose any such records. Should DOJ choose not to disclose such discretionary records, we further respectfully request that DOJ provide a descriptive index of withheld records consistent with that required in FOIA litigation under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir.1973), *cert. denied*, 415 U.S. 977 (1974).

PSNH is willing to pay the applicable fees for this request up to \$300.00 without further authorization. Please give me a call if I can clarify or facilitate this response in any way. I would certainly appreciate an expedited response since: 1) a mandatory mediation is scheduled for January 16, 2013, in the matter pending before the U.S. Court of Appeals for the First Circuit; and 2) the records PSNH has requested are for a very discrete time period. Thank you for your assistance.

Sincerely,



Linda T. Landis
Senior Counsel

cc: Ms. Amy Dona, Esq., DOJ
Mr. Mark Stein, Esq., EPA Region 1
Mr. Michael D. Freeman, Esq., Balch & Bingham LLP
Mr. Spencer M. Taylor, Esq., Balch & Bingham LLP

¹ FOIA defines "record" as including "any information that would be an agency record subject to the requirements of [the FOIA] when maintained by an agency in any format, including an electronic format." 5 U.S.C. § 552(f)(2). The Federal Records Act further defines "records" as including "all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency . . ." 44 U.S.C. § 3301.



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Fax (603) 634-2438

**Linda T. Landis
Senior Counsel**

January 9, 2013

VIA U.S. MAIL & EMAIL

Regional Freedom of Information Officer
U.S. Environmental Protection Agency
Region 1 (OARM01-6)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: Freedom of Information Request

Dear FOIA Officer:

Public Service Company of New Hampshire ("PSNH") files this request for information pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and the U.S. Environmental Protection Agency's ("EPA") FOIA regulations at 40 C.F.R. Part 2. This FOIA request, directed to you pursuant to our previous communications, is a follow up to the FOIA requests PSNH filed with EPA on or around August 31 and November 13, 2012, seeking certain information related to the lawsuit filed by Sierra Club and Our Children's Earth Foundation ("OCEF") against EPA (*Sierra Club, Inc., et al. v. United States Environmental Protection Agency*, No. 1:12-cv-10902-DPW), regarding the issuance of a new National Pollutant Discharge Elimination System ("NPDES") permit by EPA for PSNH's Schiller Station, located in Portsmouth, New Hampshire.

In addition to the district court case referenced above, Sierra Club and OCEF have also filed with the U.S. Court of Appeals for the First Circuit a petition for writ of mandamus (*In re: Sierra Club, Inc., et al.*, No. 12-1860), seeking similar relief to that sought in the above-referenced district court action. PSNH is aware that the parties to these lawsuits are considering and actively discussing settlement. In fact, PSNH, as an intervening party in the district court matter, has repeatedly requested to be a party to these ongoing settlement negotiations but has been precluded from doing so despite the fact that PSNH, as owner and operator of Schiller Station, would be most directly impacted by any settlement agreement ultimately reached between the parties. Therefore, consistent with PSNH's August 31 and November 7, 2012 FOIA requests, these lawsuits have necessitated that PSNH seek certain information related to settlement negotiations in these cases. Specifically, the instant FOIA request seeks the following agency records:

Any and all communications and correspondence, including any documents attached thereto or enclosed therewith, from November 14, 2012, to the date on which EPA deems this request to be received, between EPA, including but not limited to any EPA attorney or staff, and any attorney, employee, or other agent or representative of the Sierra Club or OCEF regarding or relating to any potential settlement in either of the two cases

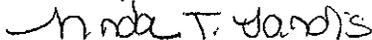
referenced above (hereinafter "Settlement Communications"). The Settlement Communications we seek specifically include any and all requests, proposals, negotiations, agreements or other discussions by any party named above relating to PSNH's NPDES permit or Schiller Station.

This FOIA request seeks any agency "record," as that term is broadly defined under federal law,¹ to specifically include not only paper and electronic writings, but any recorded phone conversations, meeting notes, and any other type of memorialization of a communication fitting the description above. Please note that this FOIA request does not seek any record previously provided by EPA to PSNH, pursuant to the PSNH's August 31 and November 13, 2012 FOIA requests.

Should EPA identify records which are responsive to this request but which EPA believes to be exempt from disclosure under FOIA, we respectfully request that, in light of President Obama's policies encouraging a "presumption of openness" and "discretionary disclosure," (see Attorney General Eric H. Holder, Memorandum for Heads of Executive Departments and Agencies, The Freedom of Information Act (Mar. 19, 2009)), EPA use its discretion under FOIA to nonetheless disclose any such records (see Memorandum from Administrator Lisa P. Jackson to EPA Employees, Transparency in EPA's Operations (Jan. 23, 2009) ("EPA offices should exercise their discretion in favor of disclosing documents whenever possible under the FOIA"). Should EPA choose not to disclose such discretionary records, we further respectfully request that EPA provide a descriptive index of withheld records consistent with that required in FOIA litigation under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir.1973), *cert. denied*, 415 U.S. 977 (1974).

PSNH is willing to pay the applicable fees for this request up to \$300.00 without further authorization. Please give me a call if I can clarify or facilitate this response in any way. I would certainly appreciate an expedited response since: 1) a mandatory mediation is scheduled for January 16, 2013, in the matter pending before the U.S. Court of Appeals for the First Circuit; and 2) the records PSNH has requested are for a very discrete time period. Thank you for your assistance

Sincerely,



Linda T. Landis
Senior Counsel

cc: Mr. Mark Stein, Esq., EPA
Ms. Amy Dona, Esq., DOJ
Ms. Kate Bowers, Esq., DOJ
Mr. Michael D. Freeman, Esq., Balch & Bingham LLP
Mr. Spencer M. Taylor, Esq., Balch & Bingham LLP

¹ FOIA defines "record" as including "any information that would be an agency record subject to the requirements of [the FOIA] when maintained by an agency in any format, including an electronic format." 5 U.S.C. § 552(f)(2). The Federal Records Act further defines "records" as including "all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency . . ." 44 U.S.C. § 3301.

Exhibit 4

Collection of correspondence between Linda T. Landis, Esq., PSNH, and Mark Stein, Esq., EPA Region 1, concerning “PSNH Response to EPA’s Proposed Discussion on FGD Wastewater” and “PSNH Response to EPA-Merrimack Station SWWTS”

From: Linda T. Landis/NUS
To: Mark Stein <Stein.Mark@epamail.epa.gov>
Cc: John M. MacDonald/NUS@NU, William H. Smagula/NUS@NU, Elizabeth H. Tillotson/NUS@NU
Date: 11/30/2012 03:07 PM
Subject: PSNH Response to EPA's Proposed Discussion on FGD Wastewater

Mark: I would like to discuss your email of November 28th with you early next week.

I have met with senior management and we have the following preliminary comments for your consideration. It is our opinion that a teleconference would be most effective at this point, with questions provided by EPA to PSNH in advance of the discussion. This would enable us to understand the area of EPA's interest and to ensure the discussion is a focused, productive, and efficient use of our time. This seems like a reasonable approach to us, particularly since we have already provided extensive information to EPA on the FGD wastewater in response to EPA information requests.

Since we will need time to ensure we have the information at hand that is responsive to your queries, I propose we look at dates the week of December 10th. Our outside counsel from Balch & Bingham will join us on the call.

I am in the office next week, so please give me a call at your convenience and we can discuss further. Linda

Linda T. Landis, Senior Counsel
Legal Department
Public Service Company of NH
780 No. Commercial Street
Manchester, NH 03101
(603)634-2700
Fax (603)634-2438

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those of Northeast Utilities, its subsidiaries and affiliates (NU). E-mail transmission cannot be guaranteed to be error-free or secure or free from viruses, and NU disclaims all liability for any resulting damage, errors, or omissions. *****

From: linda.landis@nu.com
Sent: Thursday, December 20, 2012 8:47 AM
To: stein.mark@epamail.epa.gov
Cc: william.smagula@nu.com; elizabeth.tillotson@nu.com; allan.palmer@nu.com; Fowler, Rob; Taylor, Spence
Subject: PSNH Response to EPA-Merrimack Station SWWTS
Attachments: 3525_001.pdf

Mark: This responds to the four general queries from EPA concerning the secondary wastewater treatment system (SWWTS) at Merrimack Station. As I have said in earlier conversations, the Station was not online until the end of November. We are still within what we consider a start-up period with the SWWTS, and as with any new equipment or system, we are in the tuning and adjustment optimization phase, operating equipment and adjusting chemicals as necessary to seek best and reliable operations. We will need 6-9 months of consistent operations before we are able to provide you with accurate operational data. This response is necessarily limited given the limited factual data that we have at this time.

We provide the following responses for your consideration.

1. Please provide us with a process flow line diagram (or, if necessary, multiple diagrams) showing the components of the primary and secondary FGD wastewater treatment systems. We already have this type of diagram for the primary FGD wastewater treatment system. This line diagram (or diagrams) should illustrate: (a) each component of the treatment systems, including any pretreatment softening step; (b) the order in which the components are connected with each other; (c) the flow rates of wastewater flowing between the components; (d) the location, amounts, and types of any chemical additions to the wastewater; and (e) the types and amounts of products or wastes that are emitted or produced for reuse or disposal (e.g., volumes of wastewater; amounts of solid waste). In addition, the diagram or diagrams should illustrate all of the modes in which the treatment system may be operated (e.g., if the system might be operated with or without using a particular component of the treatment system, this should be identified in the diagrams).

Please see the attached process flow diagram illustrating the primary and secondary FGD wastewater treatment systems.

2. We are interested in understanding the extent to which Merrimack Station has operated all or part of the secondary FGD wastewater treatment system to date.

PSNH has operated the SWWTS in its entirety. The system is considered to be in an optimization phase with adjustments to the process continuing to take place depending on a number of variables.

3. We are interested in hearing about your operational experience in running the secondary treatment system. To the extent the system has been used in different modes of operation, we are interested your operational experience in these different modes.

PSNH's experience in running the SWWTS is extremely limited at this early stage, and, as a result, we do not have accurate data related to the SWWTS operations at this point. During this optimization phase, systems are being tuned and balanced, chemicals adjusted. There has been limited operation in each operational mode, with the primary focus on full system integrated use. We are not comfortable providing our "impressions" related to the system operation--such preliminary data has not been adequately verified and is likely to be inconsistent.

4. We are interested in discussing your experience regarding the energy needed to operate the secondary FGD wastewater system, and whether the energy used to operate the secondary FGD wastewater treatment system affects electrical generating efficiency at Merrimack Station.

The contractually guaranteed value solely for the SWWTS is 1.4 MW. This does not include the physical-chemical system.

We believe we will be able to provide you with a more complete response to your questions once we complete the optimization phase and adjustment process.

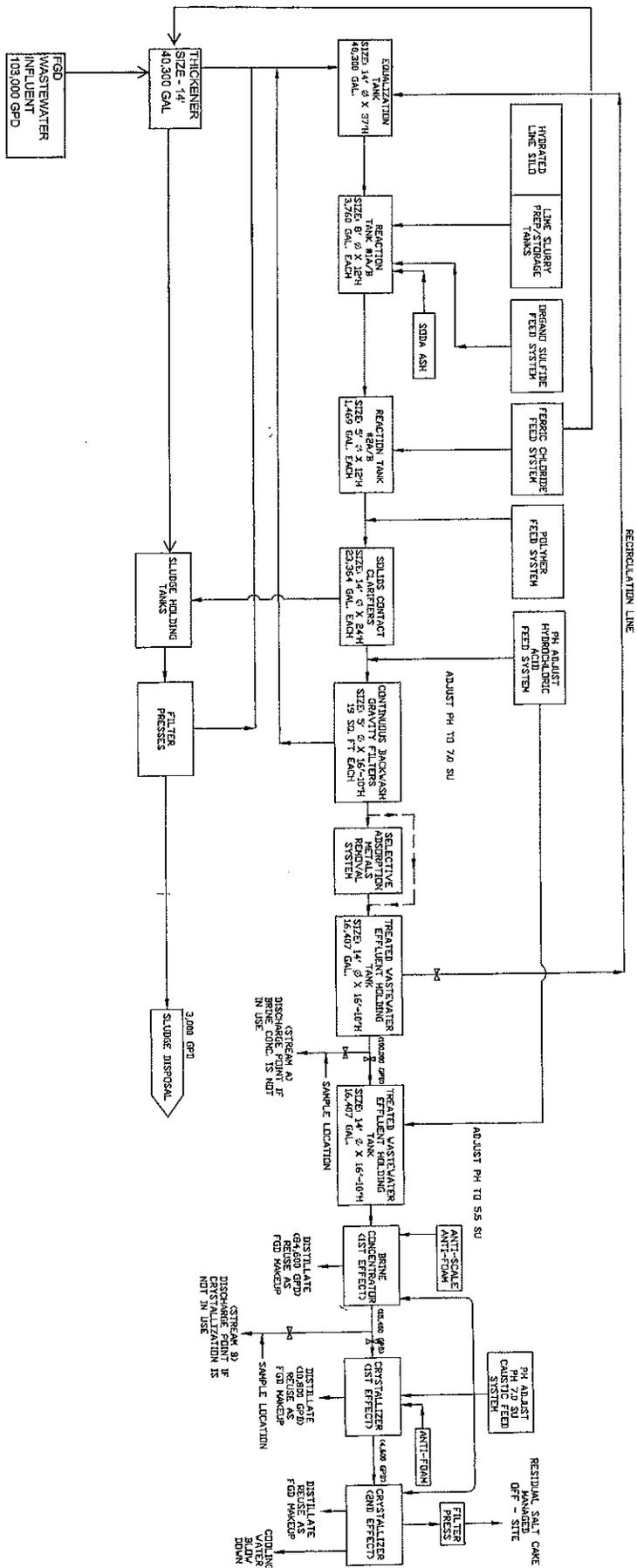
We were not able to respond to your request as quickly as we had hoped. As you know, we just filed our response to another Section 308 request for information last Monday. Because of limited resources here at PSNH and the need to focus on our core business, we were not able to consider new information-seeking queries until that earlier filing was complete. In addition, it is required by contract and by separate agreement with the vendor that we discuss in advance any potential or intended disclosures regarding the SWWTS. This technology is highly proprietary as is the adaptation of that technology to our Station and its operational needs.

Please give me a call once you have had a chance to review our response if you would like to discuss further.

Linda T. Landis, Senior Counsel
Legal Department
Public Service Company of NH
780 No. Commercial Street
Manchester, NH 03101
(603)634-2700
Fax (603)634-2438

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NOTE:
1. THE WASTEWATER SYSTEM OPERATES TWO TREATMENT
TRANS IN PARALLEL.



PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
ATTACHMENT A

From: Stein.Mark@epamail.epa.gov
Sent: Thursday, December 20, 2012 2:38 PM
To: linda.landis@nu.com
Cc: allan.palmer@nu.com; elizabeth.tillotson@nu.com; Fowler, Rob; Taylor, Spence; william.smagula@nu.com; Webster.David@epamail.epa.gov; houlihan.damien@epamail.epa.gov; Demeo.Sharon@epamail.epa.gov; king.john@epamail.epa.gov
Subject: Re: PSNH Response to EPA-Merrimack Station SWWTS

Hi Linda -

Thank you for your email offering responses to the specific items presented in my Dec. 5, 2012, email to you. I have forwarded your email and its attachment along to my colleagues in the Office of Ecosystem Protection that are working on the Merrimack Station permit.

I note that you did not propose a time for a conference call, in response to my request that you propose some times that would work for your team. I am guessing that you want to see if EPA is still interested in having a call after we review your email. My expectation is that EPA will still want to set up a conference call with you and your team, as we had discussed in prior emails, but I will confirm with my clients about whether that is the case.

As always, EPA makes permit determinations based on the best, reasonably available information, and it has been our sense that we could advance our understanding and knowledge of the Secondary Wastewater Treatment System for the FGD wastewater by directly discussing some of our questions with PSNH and AquaTech. Thus, far it has been difficult to arrange such a discussion. Having said that, I will confirm whether we still want to try to set up a call and, if so, I will call you, as your email suggests.

Thanks again.

Mark A. Stein
U.S. Environmental Protection Agency
New England Region
5 Post Office Square – Suite 100 (ORA 18-1)
Boston, MA 02109-3912

Tel.: (617) 918-1077
E- Fax: (617) 918-0077

* linda.landis---12/20/2012 09:46:43 AM---Mark: This responds to the four general queries from EPA concerning the secondary wastewater treat

From: linda.landis@nu.com
To: Mark Stein/R1/USEPA/US@EPA
Cc: william.smagula@nu.com, elizabeth.tillotson@nu.com, allan.palmer@nu.com, rfowler@balch.com, "Taylor, Spence" <staylor@balch.com>
Date: 12/20/2012 09:46 AM
Subject: PSNH Response to EPA-Merrimack Station SWWTS

Mark: This responds to the four general queries from EPA concerning the secondary wastewater treatment system (SWWTS) at Merrimack Station. As I have said in earlier conversations, the Station was not online until the end of November. We are still within what we consider a start-up period with the SWWTS, and as with any new equipment or system, we are in the tuning and adjustment optimization phase, operating equipment and adjusting chemicals as

necessary to seek best and reliable operations. We will need 6-9 months of consistent operations before we are able to provide you with accurate operational data. This response is necessarily limited given the limited factual data that we have at this time.

We provide the following responses for your consideration.

1. Please provide us with a process flow line diagram (or, if necessary, multiple diagrams) showing the components of the primary and secondary FGD wastewater treatment systems. We already have this type of diagram for the primary FGD wastewater treatment system. This line diagram (or diagrams) should illustrate: (a) each component of the treatment systems, including any pretreatment softening step; (b) the order in which the components are connected with each other; (c) the flow rates of wastewater flowing between the components; (d) the location, amounts, and types of any chemical additions to the wastewater; and (e) the types and amounts of products or wastes that are emitted or produced for reuse or disposal (e.g., volumes of wastewater; amounts of solid waste). In addition, the diagram or diagrams should illustrate all of the modes in which the treatment system may be operated (e.g., if the system might be operated with or without using a particular component of the treatment system, this should be identified in the diagrams).

Please see the attached process flow diagram illustrating the primary and secondary FGD wastewater treatment systems.

2. We are interested in understanding the extent to which Merrimack Station has operated all or part of the secondary FGD wastewater treatment system to date.

PSNH has operated the SWWTS in its entirety. The system is considered to be in an optimization phase with adjustments to the process continuing to take place depending on a number of variables.

3. We are interested in hearing about your operational experience in running the secondary treatment system. To the extent the system has been used in different modes of operation, we are interested your operational experience in these different modes.

PSNH's experience in running the SWWTS is extremely limited at this early stage, and, as a result, we do not have accurate data related to the SWWTS operations at this point. During this optimization phase, systems are being tuned and balanced, chemicals adjusted. There has been limited operation in each operational mode, with the primary focus on full system integrated use. We are not comfortable providing our "impressions" related to the system operation--such preliminary data has not been adequately verified and is likely to be inconsistent.

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The contractually guaranteed value solely for the SWWTS is 1.4 MW. This does not include the physical-chemical system.

We believe we will be able to provide you with a more complete response to your questions once we complete the optimization phase and adjustment process.

We were not able to respond to your request as quickly as we had hoped. As you know, we just filed our response to another Section 308 request for information last Monday. Because of limited resources here at PSNH and the need to focus on our core business, we were not able to consider new information-seeking queries until that earlier filing was complete. In addition, it is required by contract and by separate agreement with the vendor that we discuss in advance any potential or intended disclosures regarding the SWWTS. This technology is highly proprietary as is the adaptation of that technology to our Station and its operational needs.

Please give me a call once you have had a chance to review our response if you would like to discuss further.

Linda T. Landis, Senior Counsel
Legal Department
Public Service Company of NH
780 No. Commercial Street
Manchester, NH 03101
(603)634-2700
Fax (603)634-2438

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Exhibit 5

Correspondence dated September 10, 2013, from Linda T. Landis, Esq., PSNH, to Mark Stein, Esq., EPA Region 1, attaching portions of PSNH's May 7, 2012 response to EPA's CWA Section 308 Information Request, and correspondence from Mr. Allan G. Palmer, PSNH, to Mr. John King, EPA Region 1

From: linda.landis@nu.com
Sent: Tuesday, September 10, 2013 2:15 PM
To: Stein, Mark
Cc: Fowler, Rob; Taylor, Spence
Subject: FGD Wastewater Information
Attachments: 4536_001.pdf

Mark: Please see the attached, which includes the relevant section of PSNH's May 2012 Section 308 response as well as various emails indicating what we believed to be the completion of our reporting obligation. With all due respect, I would like to add that we are not aware of any legal basis for an ongoing, essentially *ad infinitum* monthly reporting obligation regarding what are essentially limited shipments of treated wastewater to regulated POTWs with whom we have all necessary agreements and permits in place. The treated wastewater must meet all standards of the regulated POTWs, and, as you know, is subjected to additional treatment provided by the POTWs. I am happy to discuss this further with you. Linda

Linda T. Landis, Senior Counsel
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Fax (603)634-2438

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May 7, 2012
§ 308 Information
Response

PRELIMINARY STATEMENT

As a preliminary statement, PSNH objects to the March 22, 2012 information request as unreasonable in certain respects. Specifically, it is overly broad, unduly burdensome, including the limited time period within which PSNH must respond, and disturbingly vague in its scope. In addition, PSNH believes that the request for monthly reports going forward exceeds EPA's authority under Section 308 of the Clean Water Act ("CWA") and Section 3007 of the Resource Conservation and Recovery Act ("RCRA").

Despite these objections, PSNH has made a good-faith effort to provide the information requested and believes the information contained herein to be fully responsive. The response provided today is based on a review of documents that could be readily located and reviewed in the limited time allowed. PSNH reserves the right to correct and/or supplement these responses if additional information or documents are determined to be responsive.

In a number of instances, the information provided is responsive to more than one question but is provided only once. Thus, while a response to one section may at first appear to be incomplete, there will most likely be other responsive documents provided but grouped under a different heading.

Raw data are provided but not tabulated or interpreted since PSNH is not required under the above cited statutory authorities to produce interpretative documents. The one exception is in PSNH's first response (Question 1(a), (b)(1), and (b)(2), with some data responsive to (b)(3)) which has been provided in a spreadsheet format that PSNH has created to facilitate review.

PSNH would welcome the opportunity to meet with EPA to discuss the information provided and to answer any further questions.

May 7, 2012
§308 Info
Response

2) Beginning in May 2012, please submit a monthly report containing all the information requested in Item No. 1. This report is due by the fifteenth day of the following month.

2. PSNH objects to this information request as unduly burdensome, not reasonably limited with respect to time, and to the extent it calls for PSNH to create documents not otherwise in its possession, custody, and/or control as of March 26, 2012, the date PSNH received EPA's March 22, 2012 correspondence, as beyond the statutory authority of Section 308(a) of the Clean Water Act and Section 3007 of the Resource Conservation and Recovery Act. Subject to and without waiving the foregoing objections, PSNH hereby agrees to provide EPA documents and/or reports created during the normal course of business that are responsive to Question 1, subparts (a) through (c), that PSNH has in its possession, custody, and/or control on a monthly basis. PSNH respectfully requests, however, that the due date of these monthly submissions to EPA be changed to the last day of each month for providing material relevant to the preceding month (*i.e.* information related to the month of May will be produced to EPA on or before June 30). This reporting timeframe is necessary because PSNH does not have in-house laboratory capabilities, and the local laboratories are not capable of properly analyzing what are often infinitesimally minute levels of constituents in the effluent. As such, PSNH's contract laboratory must send samples to a subcontract laboratory in Seattle, Washington. This laboratory typically does not provide analyses to PSNH for a given month until after the fifteenth day of the following month. PSNH further requests that EPA set a reasonable deadline (*e.g.* six months, or November 2012), after which PSNH is no longer obligated to provide the aforementioned documents and/or reports to the agency because the effluent at issue is being discharged in accordance with all applicable laws and regulations and is not a hazardous waste, as explained in detail below.



Fw: July POTW Report

From: Allan G. Palmer <GEN DIRECTOR > <720-2439 >

To: Linda T. Landis

08/14/2013 11:36 AM

----- Forwarded by Allan G. Palmer/NUS on 08/14/2013 11:36 AM -----



Allan G. Palmer

To: King.John@epamail.epa.gov

cc:

Subject: July POTW Report

09/19/2012 05:46 PM

[attachment "FINAL 29307 JULY RPT LRWU 082412.pdf" deleted by Allan G. Palmer/NUS]
John, As provided for the months of May and June, I have attached the analytical report that was sent to the City of Lowell POTW for the month of July. This report is responsive to the request in EPA's 308 letter dated March 22, 2012 to continue to provide analytical data generated from the FGD treatment process beginning in May 2012. While a number of similar reports are typically submitted each month to the various POTWs we use, this report is being provided since Lowell is an often used facility and it contains the sum total of all analyses that were conducted on FGD wastewater that was trucked off-site during July. This report contains two analyses each for "softened A Stream" and for "softened B Stream."

I hope these reports provide you with the information you need. As we discussed, I will email similar reports to you for the months of August thru November. Please contact me if you have questions.

Thanks, Allan.



Fw: August Report

From: **Allan G. Palmer** <GEN DIRECTOR > <720-2439 >
To: Linda T. Landis

08/14/2013 11:37 AM

----- Forwarded by Allan G. Palmer/NUS on 08/14/2013 11:37 AM -----



Allan G. Palmer

To: King.John@epamail.epa.gov

cc:

Subject: August Report

09/28/2012 04:51 PM

John, Please find attached our report to the City of Lowell POTW for the month of August. This report is responsive to the request in EPA's 308 letter dated March 22, 2012 to continue to provide analytical data generated from the FGD treatment process beginning in May 2012. This report is being provided since Lowell is an often used facility and it contains the sum total of all analyses that were conducted on FGD wastewater that was trucked off-site in August. This report contains one analysis for softened B Stream and one for distillate.

[attachment "FINAL 29307 AUG RPT LRWU 092712.pdf" deleted by Allan G. Palmer/NUS]

As we discussed, I will email similar reports to you for the months of September thru November. Please contact me if you have questions.

Thanks, Allan.



Fw: September Report

From: Allan G. Palmer <GEN DIRECTOR > <720-2439 >
To: Linda T. Landis

08/14/2013 11:38 AM

----- Forwarded by Allan G. Palmer/NUS on 08/14/2013 11:37 AM -----



Allan G. Palmer

To: King.John@epamail.epa.gov

cc:

Subject: September Report

10/18/2012 10:26 AM

John, Please find attached our report to the Town of Hooksett POTW for the month of September. This report is responsive to the request in EPA's 308 letter dated March 22, 2012 to continue to provide analytical data generated from the FGD treatment process beginning in May 2012. The Hooksett report is being provided as it was the only facility used during the month and it contains the sum total of all analyses that were conducted on FGD wastewater that was trucked off-site in September. This report contains one analysis for distillate.



FINAL Hooksett SEPT RPT 101212.pdf

As we discussed, I will email similar reports to you for the months of October and November. Please contact me if you have questions.

Thanks, Allan.

Fw: October & November Reports


From: Allan G. Palmer/NUS < GEN DIRECTOR > < 720-2439 >
To: Linda T. Landis/NUS@NU
Date: 08/14/2013 11:38 AM
Subject: Fw: October & November Reports

----- Forwarded by Allan G. Palmer/NUS on 08/14/2013 11:38 AM -----



Allan G. Palmer

To: King.John@epamail.epa.gov
cc:
Subject: October & November Reports

12/19/2012 01:33 PM

John, Please find attached our report to the Town of Hooksett POTW for the month of October. This report is responsive to the request in EPA's 308 letter dated March 22, 2012 to continue to provide analytical data generated from the FGD treatment process beginning in May 2012. The Hooksett report is being provided as it was the only facility used during the month and it contains the sum total of all analyses that were conducted on FGD wastewater that was trucked off-site in October. This report contains one analysis for distillate.



2690_001.pdf

No shipments were made off-site in November, so we have no data to submit for the month. Based upon my understanding, this report concludes our commitment to provide information in response to your 308 letter. Please contact me if you have questions.

Thanks, Allan.