



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE – SUITE 100
BOSTON, MASSACHUSETTS 02109-3012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

October 27, 2011

Linda T. Landis, Senior Counsel
Public Service of New Hampshire
P.O. Box 330
Manchester, NH 03305-0330

Re: Public Comment Period Extension Request for NPDES Permit Re-issuance,
NPDES Permit No: NH0001465

Dear Ms. Landis:

On September 30, 2011, the New England Regional Office of the United States Environmental Protection Agency (EPA, Region 1 or the Agency) issued a new draft National Pollutant Discharge Elimination System (NPDES) permit (NPDES Permit No: NH0001465) (the Draft Permit) to Public Service of New Hampshire's (PSNH or the Company) Merrimack Station power plant. EPA regulations require the Agency to provide a public comment period of at least 30 days for draft NPDES permits. *See* 40 C.F.R. § 124.10(b). Recognizing the complexity of many of the analyses underlying the Draft Permit, Region 1 set a comment period of 60 days – twice the minimum required amount – running from September 30 to November 30, 2011. In addition, recognizing the likelihood of significant public interest in the Draft Permit, Region 1 exercised its discretion to schedule a public hearing on the Draft Permit, now set to take place in Concord, New Hampshire on November 3, 2011.

On October 11, 2011, you sent a letter to EPA on behalf of PSNH requesting a 90-day extension of the public comment period and providing the company's reasons for this request. Three of PSNH's consulting firms – (1) Normandeau Associates, Inc., (2) Enercon, and (3) NERA Economic Consulting – have also expressed support for PSNH's request or themselves requested a 90-day extension of the comment period. In addition, Region 1 has received letters supporting PSNH's request for a 90-day extension from the Utility Water Act Group (UWAG), an electric industry group or trade association, and the Southern Company (Southern), a large utility. Finally, yesterday, Region 1 received a letter from United States Senators Jeanne Shaheen and Kelly Ayotte and United States Congressmen Charles F. Bass, and Frank Guinta, all of New Hampshire, requesting that EPA provide an additional 90 days for PSNH to comment on the Draft Permit.

Region 1 is responding to these extension requests at this time in order to give all interested parties the soonest possible notice of the new deadline so that they may plan accordingly. Having considered the requests, **EPA has decided to extend the comment period by an additional 90 days and, as a result, the public comment period will close on February 28, 2012.**¹ EPA will issue a new public notice in a local newspaper to inform the public of this change. With this extension, the comment period on the Draft Permit will total five months (150 days), a full five times the minimum time required by the regulations.

In the text below, Region 1 explains its decision on the extension requests. As indicated, the Agency agrees with certain points raised by the requesters but disagrees with others.

The primary reason that EPA has decided to grant the requests for an extension of the comment period is the number of complex issues embodied in the Draft Permit. In Region 1's experience, the Draft Permit is unusual, if not necessarily unprecedented, in this regard. Each of the extension requests also cited the complexity of the issues raised by the Draft Permit as a central reason for the requested extension. Specifically, many complex issues are raised by the derivation of the Draft Permit's thermal discharge limits, cooling water intake requirements, and limits on discharges of pollutants from Merrimack Station's new Flue Gas Desulfurization (FGD) wet scrubber system. In addition, the Draft Permit also addresses many other more straightforward water pollution issues associated with Merrimack Station. Although more straightforward, these additional issues could potentially combine with the more complex issues to make it cumulatively even more challenging for the public to review and comment on the Draft Permit within 60 days.

In determining how long to extend the comment period, EPA also took account, as pointed out by PSNH, of the relative timing of any extended comment period and the Thanksgiving, Christmas and New Year's holidays. EPA agrees that providing additional time for comment beyond these holidays would better ensure that interested parties have adequate time to review and comment on the Draft Permit while also attending to family during the holiday season.

EPA was, of course, aware of the complexity of the issues raised by the Draft Permit when the Agency issued it. At the same time, Region 1 had good reasons for initially concluding that 60 days would provide an adequate time for PSNH and the public to comment on the permit. Region 1 was aware that PSNH is represented by a large team of sophisticated personnel, including in-house technical and legal personnel and a variety of outside consulting firms and law firms. Furthermore,

¹ The date for the public hearing will not change. It will still be held on November 3, 2011, in Concord, NH.

from the numerous communications concerning this permit that have occurred over many years between the Region and PSNH, EPA knows that the company and its representatives have been considering and evaluating the key permit issues in great detail during the months and years of work leading up to issuance of the Draft Permit. On this basis, Region 1 initially decided that a comment period of 60 days – twice the minimum amount specified in the regulations – ought to provide PSNH and the public a reasonable amount of time to review and comment on the permit. At the same time, EPA understood that interested parties might request that the comment period be extended. Now, having read the extension requests, Region 1 is persuaded that the additional time to be provided will provide better assurance that PSNH and others have a fully adequate opportunity to review and comment on the Draft Permit.

As stated above, EPA has fully considered each of the extension requests and does not agree with all of the reasons they offer for extending the comment period. A few of these points warrant specific response from Region 1.

PSNH, Southern and UWAG urge that EPA should not “rush” the public comment period for the Draft Permit. Rest assured that EPA does not “rush” comment periods. As explained above, Region 1 had sound reasons for concluding initially that 60 days was a reasonable time for comment. That said, we have objectively considered the extension requests and decided that an extension is in order in this case.

While it is a given that adequate time must be provided for public review and comment on draft NPDES permits, Region 1 also finds that there is a need to move the Merrimack Station permitting process forward as expeditiously as reasonably possible. The full importance of updating Merrimack Station’s existing NPDES permit, issued in 1992, has only come fully into focus relatively recently, as EPA completed its scientific analyses in support of the Draft Permit. These analyses indicate that operation of the power plant’s cooling system has caused or contributed to serious harm to the ecology of the local segment of the Merrimack River. It is also essential that any pollutant discharges to the river from the facility’s new FGD scrubber system, which could include a variety of toxic pollutants, be properly controlled. The new Draft Permit seeks to address all these issues. Furthermore, as the letters from PSNH and UWAG point out, Merrimack Station’s existing NPDES permit expired more than 14 years ago. Although there are many good reasons for the lengthy course of this permit development, a reissued permit for Merrimack Station is undoubtedly long overdue.

In support of PNSH’s extension request, your letter (at p. 2) states that “EPA took over 14½ years (five thousand three hundred seventeen [5,317] days to review PSNH’s renewal application ...” and that “[i]n light of this lengthy delay, providing ... an additional 90 days cannot be viewed as creating any significant harm”

This line of argument by PSNH is disingenuous. The Company is well aware that EPA did not develop the new Draft Permit based solely on a 14½-year of review of PSNH's 1997 permit renewal application. As PSNH knows, during this time Region 1 has been reviewing and analyzing a huge amount of information beyond the 1997 permit renewal application. Indeed, EPA sent the Company a number of substantial information request letters that led to major submissions of additional information by the company to EPA, including submissions in 2002, 2005, 2007, and 2010. Indeed, the FGD-related issues were really only presented in detail by PSNH to EPA in 2010. Throughout this time, EPA has reviewed all of these submissions with care. EPA has also conducted significant independent research on the issues involved in the permit.²

Progress on this and other power plant permits has also been unavoidably slowed by the repeatedly changing legal environment surrounding the development of cooling water intake structure requirements under Section 316(b) of the Clean Water Act, and by the litigation that has been associated with many NPDES permits for existing power plants. New regulations under Section 316(b) that were applicable to Merrimack Station and other large existing power plants were promulgated by EPA in 2004, only to be remanded to the Agency by a federal appeals court in 2007 and then suspended by the Agency. Then the Supreme Court in 2009 reversed one of the appeals court's key rulings. EPA then began development of another new set of regulations. PSNH is fully cognizant of all these developments and the difficulty that they have posed for pushing this and other power plant permits ahead. Indeed, in 2008, PSNH asked EPA to commit to delaying the new Merrimack Station draft permit until after the Supreme Court decision. In response, EPA refused to make any such commitment, indicating that it was important to continue working on development of the draft permit, but also indicating that it would take the request under advisement as it continued to work on the draft permit. EPA also noted that the court decision might well precede the draft permit, and that if the draft permit was issued prior to the Supreme Court's decision, then any necessary adjustments could be made for the final permit. Of course, as it turned out, the Supreme Court decision was issued well before the Draft Permit.

Furthermore, at no time did PSNH ask EPA to accelerate the development of new permit limits applicable to Merrimack Station's thermal discharges and cooling water withdrawals. While this is understandable given that maintaining the status quo with regard to these permit limits is in PSNH's financial interest, any suggestion or implication that PSNH has somehow been prejudiced by the time that EPA has needed to develop the new Draft Permit must be rejected.

² It should go without saying that during these years, EPA was also working on NPDES permit for numerous other power plants and other private and public facilities, as well as a huge variety of other types of environmental protection work.

Your letter (at p. 2) also argues that the requested extension is warranted because “EPA did not provide any notice that after 14½ years of deliberations the permit was forthcoming this month.” This argument is misleading. EPA and PSNH communicated with each other on numerous occasions during 2010 regarding the upcoming draft permit, including written exchanges, telephone calls, and a large face-to-face meeting at EPA’s offices on November 8, 2010. In these discussions, PSNH asked EPA, among other things, to issue an NPDES permit to cover *just the new FGD scrubber system wastewater discharges*. EPA declined this request and indicated that it expected to issue the new draft permit addressing *all* the relevant issues, including thermal discharge and cooling water withdrawal issues, by some time around the end of 2010. While this target date ending up slipping until September 30, 2011, as EPA conducted certain additional analyses and refined, checked and re-checked others, any suggestion that the Draft Permit arrived as some sort of “bolt from the blue” after 14½ years of internal EPA deliberations on the Company’s permit renewal application must be dismissed. The company knew the Draft Permit was imminent as of late 2010 and should not have been surprised when EPA called on September 28, 2011, to indicate that the permit would be publicly available on September 29 and that the comment period would begin on September 30.

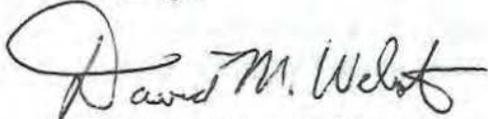
The bottom-line is that the lengthy course of the development of the Draft Permit is not determinative of the reasonableness of the comment period. Instead, the relevant considerations center on the number and complexity of the issues presented by the permit. In this case, EPA has also considered the occurrence of the holiday season during the public comment period and the implications of delays on environmental protection. EPA’s analyses for the Draft Permit indicate that Merrimack Station’s current operations have caused or contributed to harm to the ecology of the Hooksett Pool segment of the Merrimack River and, therefore, that the permit proceeding should move ahead with reasonable expedition. Weighing all of these factors, EPA has decided, as stated above, that extending the comment period by 90 days is appropriate in this case.

As a final matter, EPA notes that UWAG’s letter (at p. 3) urges that the comment period should be extended because EPA is currently scheduled to issue by July 2012 both (1) new final regulations for cooling water intake structure requirements under Section 316(b) of the Clean Water Act, and (2) new proposed regulations setting effluent limitation guidelines for FGD scrubber system wastewater. Yet, neither of these scheduled future rulemaking steps provide a good reason to extend the comment period for the Draft Permit. Moving ahead with cooling water intake requirements based on Best Professional Judgment is consistent with current regulations. See 40 C.F.R. § 125.90(b). In light of the fact that a Final Rule has not yet been issued and the possibility of litigation over any Final Rule, it remains unavoidably uncertain at the present time exactly when any new final regulations will go into effect under Section 316(b). Furthermore, moving ahead with FGD

wastewater limits is consistent with the existing statute, regulations and guidance, and it presently is unclear when a Final Rule setting national effluent guidelines for this wastewater will go into effect, as not even a Proposed Rule has yet been issued. Furthermore, further delaying the permit proceeding because of one or both of these currently scheduled rulemaking actions would hold other important requirements in the Draft Permit, such as those for thermal discharges, "hostage" to these rulemaking schedules. In sum, EPA does not regard these rulemaking actions to be good reasons for extending the public comment period for the Draft Permit, but the Agency will, of course, consider the status of the rulemaking efforts as it works on development of a final permit for Merrimack Station.

If you have any technical questions regarding this Public Comment extension, please contact John Paul King at (617) 918-1295. If you have any legal questions, please direct them to Mark Stein at (617) 918-1077.

Sincerely,



David M. Webster, Manager
Industrial Permits Branch
Office of Ecosystem Protection

cc: NPDES Permit File (Permit No: NH0001465)
Hon. United States Senator Jeanne Shaheen
Hon. United States Senator Kelly A. Ayotte
Hon. United States Congressman Charles F. Bass
Hon. United States Congressman Frank Giunta
Hon. Governor of New Hampshire John H. Lynch
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