

March 23, 2016

VIA E-MAIL
VIA FIRST CLASS MAIL

Mr. David M. Webster
Water Permit Branch Chief
U.S. Environmental Protection Agency - Region 1
5 Post Office Square, Suite 100 (OEP06-1)
Boston, MA 02109-3912

Ms. Sharon DeMeo
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (OEP06-1)
Boston, MA 02109-3912

Mr. Mark A. Stein, Esq.
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 1
Office of Regional Counsel, Region 1
5 Post Office Square, Suite 100 (CIP)
Boston, Massachusetts 02109-3912

**Re: Public Service Company of New Hampshire
Merrimack Station, Bow, New Hampshire
Draft NPDES Permit No. NH0001465
Final Effluent Limitation Guidelines Voluntary Incentives Program for Flue Gas
Desulfurization Wastewater**

Dear Mr. Webster, Attorney Stein, and Ms. DeMeo:

On behalf of Public Service Company of New Hampshire d/b/a Eversource Energy (hereinafter "PSNH" or "the Company"), I write to notify Region 1 of the Environmental Protection Agency ("EPA") of the Company's decision to opt into the Voluntary Incentives Program ("VIP"), established by and through the final Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category ("ELGs") for the regulation of flue gas desulfurization ("FGD") wastewater, at Merrimack Station.¹ The ELGs became effective on January 4, 2016, meaning EPA is obligated to apply these uniform, technology-based standards to regulated entities within the steam electric power generating industry, including to Merrimack Station since the draft National Pollutant Discharge Elimination System ("NPDES") permit for the Station has not yet been finalized.² EPA, in

¹ See, e.g., 80 Fed. Reg. 67,838, 67,858-59 (Nov. 3, 2015).

² See, e.g., *NRDC v. EPA*, 822 F.2d 104, 111 (D.C. Cir. 1987) (noting that a state or permit writer may set limitations utilizing its best professional judgment ("BPJ") authority only when there is no national

the Fact Sheet issued in the concurrent ongoing NPDES permit renewal process for PSNH's Schiller Station, confirmed this applicability of the ELGs prior to a final permit being issued.³

EPA established the VIP in the ELGs because it "offers significant environmental protections beyond those achieved by the final BAT limitations for FGD wastewater based on chemical precipitation plus biological treatment."⁴ The agency also explicitly confirmed in its response to comments "that it has not excluded any plants from the ability to opt into the [VIP], and that plants that already use evaporation technology to treat their FGD wastewater may opt into the [VIP] and be subject to the BAT limitations applicable to FGD wastewater discharges based on evaporation."⁵

As EPA is aware, Merrimack Station treats its FGD wastewater using physical/chemical treatment with an Enhanced Mercury and Arsenic Removal System as its primary wastewater treatment system ("PWWTS"). In addition to treatment of wastewater using the PWWTS, the Company significantly reduces the volume of FGD wastewater using a softening, evaporation, and crystallization technology as its secondary wastewater treatment system ("SWWTS"). As explained in PSNH's Comments to EPA's Revised Draft NPDES Permit No. NH 0001465 for Merrimack Station, the SWWTS is not currently able to achieve zero liquid discharge for various reasons and continues to require a purge stream. The Station's optimization of the PWWTS and SWWTS is ongoing, and through experience with operational issues and continued improvements, the Company expects to be able to achieve the evaporative-based effluent limitations set forth in the ELGs by December 31, 2023.

PSNH will provide within 60 days an updated submission to EPA concerning the current status of its wastewater treatment systems that will include a description of its ongoing optimization processes, in addition to a description of the ongoing operational challenges that must be addressed for the system to achieve the ELG evaporative limits by 2023. This report will provide specific examples of FGD wastewater treatment issues the Company continues to address at Merrimack

standard that has been promulgated for a point-source category); *Citizens Coal Council v. EPA*, 447 F.3d 879, 881 n.11 (6th Cir. 2006) (noting that BPJ applies only when "EPA has not promulgated an applicable guideline"); see also *Riverkeeper v. U.S. E.P.A.*, 358 F.3d 174, 203 (2d Cir. 2004) ("It is, of course, true that once the EPA promulgates applicable standards, regulation of those facilities subject to those standards on a [BPJ] basis must cease"); Letter from Jim Hanlon, Director, Office of Wastewater Management, to Water Division Directors Regions 1-10 (June 7, 2010) (commonly referred to as the "Hanlon Memorandum") (acknowledging that BPJ-based limits are only to be included in permits "until such time [as the NELGs are] promulgated.").

³ See U.S. EPA Region 1, Fact Sheet to the Draft National Pollutant Discharge Elimination System Permit to Discharge to Waters of the United States Pursuant to the Clean Water Act at 10, Permit No. NH0001473, PSNH Schiller Station (Sept. 30, 2015) (providing that the agency will apply the ELGs at the facility, to the extent appropriate, "if [the ELGs are] in effect at the time that a new Final Permit is issued to Schiller Station.").

⁴ See 80 Fed. Reg. at 67,859.

⁵ Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category: EPA's Response to Public Comments; Part 8 of 10, at 8-3 (September 2015).

Station that will clarify why compliance with evaporative-based effluent limitations cannot be required until December 31, 2023, at the facility.

Pursuant to the standards set out in the ELGs for the VIP, PSNH therefore respectfully requests that EPA include in the final NPDES permit for Merrimack Station:

- 1) Best Available Technology Economically Achievable ("BAT") TSS effluent limitations for FGD wastewater generated at the facility prior to December 31, 2023, equal to Best Practicable Control Technology Currently Available ("BPT") for TSS at 40 C.F.R. § 423.12(b)(11);⁶ and
- 2) BAT effluent limitations set out in the table following 40 C.F.R. § 423.13(g)(3)(i) for FGD wastewater generated at the facility on or after December 31, 2023.⁷

Please do not hesitate to call me if you have any questions or wish to discuss this matter further.

Very truly yours,



Linda T. Landis
Senior Counsel

Pursuant to the signatory requirements set out in 40 C.F.R. § 122.22:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.



William H. Smagula, P.E.
Vice President-Generation, Eversource Energy

⁶ See 40 C.F.R. § 423.13(g)(3)(ii).

⁷ See 40 C.F.R. § 423.13(g)(3)(i).

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Ms. Sharon DeMeo
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cc: William H. Smagula, P.E., Vice President-Generation, Eversource Energy
Elizabeth H. Tillotson, Eversource Energy
Allan G. Palmer, Eversource Energy
Bradley Owens, Eversource Energy
Spencer M. Taylor, Esq., Balch & Bingham LLP
R. Bruce Barze, Jr., Esq., Balch & Bingham LLP
Robert F. Fowler, Esq., Balch & Bingham LLP
Thomas G. DeLawrence, Esq., Balch & Bingham LLP