



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Region I – New England  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912**

**Sent via FOIAonline**

January 13, 2021

**RE: Freedom of Information Act (FOIA) Request No. EPA-R1-2021-001089**

Dear Mssrs. Fabish and Parts:

This is in response to your Freedom of Information Act request of November 23, 2020, **related to Schiller Station Power Plant in Portsmouth, New Hampshire, NPDES Permit No. NH0001473**. Region 1 previously released 10 documents to you in an interim release via FOIAonline on December 21, 2020.

Region 1 has determined that seven additional documents are responsive to your request but may contain information over which GSP Schiller LLC or its contractors (collectively, “GPS Schiller”) have asserted a claim of business confidentiality. Further, Region 1 has determined that the information may be entitled to confidential treatment under 40 CFR part 2, subpart B, and that further inquiry by EPA pursuant to subpart B is required before a final determination on the request can be issued. Therefore, EPA is initially withholding four of these documents in full and portions of the other three documents, all pursuant to Exemption 4, which exempts from disclosure information claimed to be confidential business information (“CBI”). *See* 5 U.S.C. § 552(b)(4). EPA has, therefore, uploaded, into FOIAonline, versions of these three documents with the potential CBI redacted.

Accordingly, pursuant to 5 U.S.C. § 552(b)(4) and 40 CFR § 2.204(d)(1), your request is being initially denied as it pertains to the claimed-CBI because further inquiry by EPA is required before a final CBI determination can be made. Region 1 is prepared to consult with the CBI-claimant seeking its comments to support its CBI claim, pursuant to 40 CFR § 2.204(e)(4). After such consultation, and pursuant to 40 CFR § 2.205, EPA Region 1’s Office of Regional Counsel (“ORC”) would issue a final confidentiality determination. While we are fully prepared to undertake this process, we also recognize that, if you are not interested in receiving the claimed-CBI, it would allow ORC to focus its limited resources on other important matters. Consequently, on January 12, 2021, ORC’s Michael Curley spoke with Zachary Fabish by telephone regarding the documents being initially withheld pursuant to Exemption 4 to ascertain whether you would like us to begin the process of making a final CBI determination or, conversely, whether you would consider the request as to the claimed-CBI withdrawn. Mr. Fabish responded that you would prefer to receive the redacted documents before providing a decision on this question. Mr. Fabish agreed that ORC should delay beginning the process of making a final CBI determination until and unless you inform us that you have decided to request the claimed-CBI. Therefore, we are providing via FOIAonline the three redacted documents discussed above and an additional redacted document discussed below. Please inform us by **January 27, 2021**, if you would like us to begin the process of making a final determination on the potential CBI (including the four documents being withheld in their entirety under Exemption 4).

If you do not indicate to us by **January 27, 2021**, that you would like us to begin the final CBI determination process, we will consider your FOIA request as to the potential CBI withdrawn. Conversely, if you decide that you would like us to begin that process, Region 1 ORC will review the information withheld under Exemption 4 and issue a final confidentiality determination. Therefore, if you timely inform us that you would like us to begin the final CBI determination process, you do not at that time also need to appeal the withholding of information pursuant to Exemption 4. Once ORC issues a final confidentiality determination, EPA will notify you whether the information qualifies for confidential treatment or may be released.

Further, Region 1 is withholding portions of one additional document pursuant to Exemption 5 – deliberative process privilege, 5 U.S.C. § 552(b)(5). Exemption 5 protects the quality of the Agency's decision-making process to encourage candid and frank discussions among Agency officials, and to avoid premature disclosure which could mislead the public. This document may also contain information considered by GSP Schiller to be CBI, and portions are being withheld on that additional basis, as noted earlier. The document is a pre-decisional, rough draft of an unfinished Region 1 memorandum to file regarding a telephone call between Region 1 staff and representatives of GSP Schiller on September 30, 2020, concerning potential modification of the NPDES Permit for Schiller Station. In its rough and unfinished form, the early draft could potentially lead to public confusion. Furthermore, the draft would be subject to further internal review prior to addition to the administrative record, at which time it would be made available to the public (with the possible exception of CBI).

To the extent you would like to appeal any non-Exemption 4 issues or withholdings, you may appeal this response by email at [hq.foia@epa.gov](mailto:hq.foia@epa.gov), or by mail to the EPA's National FOIA Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2310A), Washington, DC 20460 or through FOIAonline if you are an account holder. If you are submitting your appeal by hand delivery, courier service, or overnight delivery, you must address your correspondence to 1200 Pennsylvania Avenue, N.W., WJC-N Building, Room 7309C, Washington, DC 20460. Your appeal must be in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90-calendar-day limit. Appeals received after 5:00 p.m. EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." If you need any further assistance or would like to discuss any aspect of your request, you may seek assistance from EPA's FOIA Public Liaison at [hq.foia@epa.gov](mailto:hq.foia@epa.gov) or call (202) 566-1667. You may also seek assistance from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001; email: [ogis@nara.gov](mailto:ogis@nara.gov); telephone: (202) 741-5770 or (877) 684-6448; or fax: (202) 741-5769. For all media inquiries, please contact [press@epa.gov](mailto:press@epa.gov).

You should refer to FOIA # EPA-R1-2021-001089 in any further correspondence concerning this matter. Please contact Michael Curley, Office of Regional Counsel, at 617-918-1623 or [curley.michael@epa.gov](mailto:curley.michael@epa.gov), should you have any questions concerning this matter.

Sincerely,

Ken Moraff, Director  
Water Division

cc: Cris Schena, R1 FOI Officer