



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

Date: See signature stamp below

Approved OMB 2020-003
Approval expires 09/30/2023

By eMail Return Receipt Requested:

Lynn Tillotson
Granite Shore Power, Vice President
431 River Road
Bow, NH 03304
603-230-7968
Elizabeth.Tillotson@graniteshorepower.com

Re: Schiller Station Portsmouth, New Hampshire

Dear Lynn Tillotson:

You recently provided Region 1 of the U.S. Environmental Protection Agency (“EPA” or “Agency”) with a redacted 97-page document, dated July 28, 2020, relating to the Schiller Station Power Plant in Portsmouth, New Hampshire, entitled “Wedgewire Screen Site-Specific Study Engineering Evaluation.” You have asserted business confidentiality claims as to the redacted portions of the document.

In accordance with applicable EPA regulations, 40 C.F.R. Part 2, Subpart B, the EPA has determined that it is likely that EPA eventually will be requested to disclose the redacted information at some future date and thus will have to determine whether the redacted information is entitled to confidential treatment. Further, EPA has preliminarily determined that the redacted information may be entitled to confidential treatment.

The purpose of this letter is to notify you that the EPA Region 1 – Office of Regional Counsel (“ORC”) will be making a *final* confidentiality determination concerning the information you have claimed as CBI. If you feel that some, or all of the information is entitled to confidential treatment, you must make the showings below with specific reference to those portions of the information you consider confidential.

Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying and substantiating the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that you claim to be CBI. Please note that if a page, document, group, or class of documents claimed by you to be CBI contains a significant amount of information which ORC determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. Please be advised that any information not specifically identified as subject to a confidentiality claim and substantiated as

such in your response to this letter may be disclosed to a requester without further notice to you.

In making its final confidentiality determination, the EPA will consider the relevant substantive criteria in its CBI regulations, under 40 C.F.R. § 2.208(a)-(d), as well as the U.S. Supreme Court's decision in *Food Marketing Institute v. Argus Leader Media* (*Argus*), 139 S. Ct. 2356 (2019), which evaluated the definition of "confidential" as used in Exemption 4. In the *Argus* decision, the Court held that at least where "[1] commercial or financial information is both customarily and actually treated as private by its owner and [2] provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4." *Argus*, 139 S. Ct. at 2366.

Thus, for each item or class of information that you claim as CBI, please answer the following questions, giving as much detail as possible. EPA will use your responses to these questions to determine whether the information has been shown to be entitled to confidential treatment:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to the EPA becomes stale over time. Please explain why EPA should protect the information you claim as confidential for the time period specified in your answer to question #1.
3. Has EPA, another federal agency, or court made any determination as to the confidentiality of the information? If so, please attach a copy of the determination.
4. Is the information contained in any publicly available material such as patents or patent applications, publicly available databases (including state databases), promotional publications, annual reports, or articles? Yes/No

If you answered "yes", please identify the publicly available information and its location (e.g., patent number or website address).

5. Has your company taken reasonable measures to protect the information claimed as CBI? If so, please identify the measure or internal controls your business has taken to protect the information claimed as confidential:
 - a. Non-disclosure agreement required prior to access. Yes/No
 - b. Access is limited to individuals with a need-to-know. Yes/No
 - c. Information is physically secured (e.g. locked in a room or cabinet) or electronically secured (encrypted, password protected, etc.). Yes/No
 - d. Other internal control measures(s). Yes/No. (*If yes, please explain.*)
6. Does your company customarily keep the information private or closely-held? If so, please explain the basis for your response.
7. At the time you submitted the information you claimed as CBI, did EPA provide any express or implied assurance of confidentiality? If so, please provide the specific assurance(s) you received. For example, expressed assurances indicating that information will not be publicly disclosed could include legal authorities (regulation or statute), direct communications, class determinations, etc. Examples of implicit assurances could include a description of the specific context in which the information was received.

8. Did the Agency provide any expressed or implied indications at the time the information was submitted that EPA would publicly disclose the information?
9. If you believe any submitted information to be a trade secret, please state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be a trade secret.
10. Are there any means by which a member of the public could obtain access to the information or readily discover the information claimed as confidential through reverse engineering?
11. Please explain why the information claimed as confidential is not emissions data under the Clean Air Act, effluent data under the Clean Water Act, health and safety data under the Toxics Substances Control Act, or any other information that is prohibited from protection under regulation or statute.
12. Explain any other issue or additional information you deem relevant to EPA's determination.

Please note that *you bear the burden of substantiating your CBI and trade secret claim(s)*. Generalized or conclusory statements will be given little or no weight in EPA's determination on the confidentiality of the information you claim to be CBI.

Your comments must be postmarked or hand delivered to this office, or emailed to smart.mark@epa.gov, by the 15th working day after your receipt of this letter. You may seek an extension of time to submit your comments to this office, but your request must be made before the end of the 15-day period. In the event a FOIA request is submitted, no extension will be approved without the consent of the FOIA requester, except in extraordinary circumstances. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim(s), and the EPA may release the information.

If you wish to claim any information that you provide in your response to this letter to be claimed as CBI, you must mark the response with "**CONFIDENTIAL BUSINESS INFORMATION**" or with a similar designation, and you must bracket all text in the response that you so claim. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information provided in your response as confidential, it may be made available to the public without further notice to you.

Should you have any questions concerning this matter, please call Mark R. Smart, FOIA Paralegal at (617) 978-1094 or smart.mark@epa.gov

Sincerely,

Ken Moraff, Director,
Water Division