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SIERRA CLUB**

February 28, 2012

John Paul King
U.S. Environmental Protection Agency
Office of Ecosystem Protection
5 Post Office Square, Suite 100 (OEP06-1)
Boston, MA 02109-3912
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Via certified mail and electronic mail

Re: Comment on Draft National Pollutant Discharge Elimination System (“NPDES”) Permit No. NH0001465 for Public Service Company of New Hampshire’s (“PSNH”) Merrimack Station

Dear Mr. King,

Thank you for the opportunity to comment on the draft National Permit Discharge Elimination System (“NPDES”) permit for the Merrimack Station. We appreciate the very substantial work that has gone into crafting this permit. Because the Environmental Protection Agency’s (“EPA”) analysis of Best Available Technology (“BAT”) will serve as a guide to states around the country that are now obliged to use “Best Professional Judgment (“BPJ”) to set BAT-based effluent limits for power plants, this permit and the underlying analysis that supports it will have precedential value well beyond New Hampshire. Accordingly, it is essential that EPA finalize limits for all discharged pollutants, including thermal pollution, that genuinely reflect maximum reductions that state-of-the-art pollution control technology can achieve. Further, given ongoing impairment of water quality in the Merrimack River from mercury contamination, it is incumbent on EPA to require the Public Service Company of New Hampshire (“PSNH”) to achieve zero liquid discharge as the company itself has determined is economically achievable.

We incorporate by reference the detailed comments submitted by the Conservation Law Foundation, and in keeping with those comments, we strongly support EPA’s identification of closed-cycle cooling (“CCC”) as BAT for thermal pollution and also as best technology available (“BTA”) for minimizing adverse environmental impact as required by Clean Water Act § 316(b). 33 U.S.C. § 1326(b). However, in the final permit, EPA should make clear that BTA entails year-round operation of CCC.

With respect to BAT for the newly installed fluidized gas desulfurization (“FGD”) system, EPA has correctly identified vapor compression evaporation (“VCE”) as an available technology. While the agency has provided ample data demonstrating that biological treatment systems are also available to achieve significant removal of selenium and other metals of concern when paired with an effective physical/chemical treatment system, EPA should identify VCE as BAT given its ability to achieve zero liquid discharge. As the Clean Water Act makes clear, BAT “effluent limitations shall require the elimination of discharges of *all* pollutants if the Administrator finds on the basis of information available . . . that such elimination is technologically and economically achievable.” 33 U.S.C. 1311(b)(2)(A) (emphasis added). Here, information provided by PSNH establishes that elimination of all pollutants from the FGD effluent is eminently achievable and may well be feasible for other coal combustion waste waters as well. In this regard, EPA must undertake a BAT analysis for all waste streams at the plant, particularly ash handling waters and coal pile run-off that are known to be contaminated with significant concentrations of the toxic heavy metals present in coal. EPA itself has made clear to the states that BAT effluent limits must be imposed to curb pollution from these wastewaters, and the same requirement, of course, applies to the agency.¹

Finally, we understand that PSNH is currently disposing of its FGD effluent off-site. We urge EPA to investigate whether this wastewater is receiving treatment commensurate with its high concentrations of total dissolved solids including soluble metals, chlorides, and sulfates.

Thank you for your consideration. Please feel free to contact undersigned counsel with any questions.

Sincerely,



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¹ See, e.g., Letter from Christopher B. Thomas, Chief, Pollution Control & Implementation Branch, Water Div., U.S. Env'tl. Prot. Agency, to Paul E. Davis, Dir., Div. of Water Pollution Control, Tennessee Dep't of Env't & Conservation Re TVA Kingston Fossil Plant (Aug. 8, 2011) and Letter from Christopher B. Thomas, Chief, Pollution Control & Implementation Branch, Water Div., U.S. Env'tl. Prot. Agency, to Paul E. Davis, Dir., Div. of Water Pollution Control, Tennessee Dep't of Env't & Conservation Re TVA Gallatin Fossil Plant (Aug. 8, 2011)

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