The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner

August 28, 2009

Ms. Catherine M. Corkery
Chapter Director
New Hampshire Sierra Club
40 North Main Street
Concord, NH 03301

Re: Request for Extension for Public Hearing and Public Comment Period
PSNH Merrimack Station, Bow, NH
Facility ID # 3301300026, Application #FY96-TV048

Dear Ms. Corkery

The New Hampshire Department of Environmental Services, Air Resources Division (Department) received the New Hampshire Sierra Club's (NH Sierra Club) letter on August 10, 2009, requesting a postponement of the public hearing and an extension of the public comment period for Public Service of New Hampshire's Merrimack Station's (PSNH) draft Title V Operating Permit. As you recall, in the spring of 2009, NH Sierra Club strongly encouraged the Department to finalize its review of the PSNH Merrimack Station Title V Operating Permit application.

In part to accommodate NH Sierra Club, in April of 2009, the Department committed to and announced its intention (both in the form of a letter to interested parties and on the Department's website) that the Department would finalize its review and issue a public notice prior to July 31, 2009, and schedule a public hearing prior to September 11, 2009. Prior to NH Sierra Club's August 10th letter, no comments related to the above schedule were received by any interested party.

DES has reviewed NH Sierra Club's request and has determined that the public hearing date previously scheduled will not change and will be held on Thursday, September 3, 2009 at 6:00 pm, as originally planned. However to address your concerns, DES will extend the public comment period deadline to Tuesday, October 20, 2009 at 4:00 pm. This extension of the public comment period will also be announced at the public hearing.

If you have any questions or wish to discuss this further, please contact me at robert.scott@des.nh.gov or 603-271-1088 or Elizabeth Nixon at elizabeth.nixon@des.nh.gov or 603-271-0883.

Sincerely,

Robert R. Scott
Director
Air Resources Division

rrs/ern
cc: Arthur Cunningham, NH Sierra Club
John MacDonald, PSNH
William Smagula, PSNH
Laurel Brown, PSNH
Ida McDonnell, US EPA

Public Service of New Hampshire

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The Northeast Utilities System

Linda T. Landis
Senior Counsel

August 27, 2009

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AIR RESOURCES DIVISION

Michele Andy, Administrator
Permitting and Environmental Health Bureau
NH Dept. of Environmental Services
Air Resources Division
PO Box 95
29 Hazen Drive
Concord, NH 03302

Dear Ms. Andy:

Public Service Company of New Hampshire ("PSNH"), as the owner and operator of Merrimack Station in Bow, New Hampshire, wishes to express its support of Air Resources Division's ("ARD") efforts to proceed with the long-awaited Title V permit process. We oppose any delay to the schedule established by ARD, as requested by the New Hampshire Sierra Club ("NHSC") in its August 7, 2009 letter. We also wish to take this opportunity to correct the record in this matter pertaining to various inaccuracies and misstatements in the NHSC letter.

We find it of particular interest that although NHSC is now asking that the Title V process be delayed, on numerous occasions NHSC has criticized PSNH and ARD for not accelerating the Title V permit process. For example, in its March 19, 2009 Notice of Appeal to the New Hampshire Air Resources Council, NHSC sought reversal of the issuance of the Scrubber permit because "of the failure of PSNH to obtain a Title V permit..." and criticized what it termed the "delinquent Title V process." Likewise, NHSC submitted comments to ARD in the Temporary Permit proceeding for the Scrubber project, criticizing PSNH's lack of a Title V permit. In fact, NHSC devoted several pages of its comments to criticizing PSNH and ARD regarding the Title V issue. NHSC Comments at 1-3. PSNH has a difficult time understanding NHSC's contradictory positions regarding this issue. On the one hand, it criticizes ARD and PSNH for failing to proceed with the Title V process and then, on the other hand, when that process is undertaken, NHSC seeks to delay it.

Furthermore, the NHSC letter contains a number of inaccurate statements. NHSC asserts in its letter that PSNH replaced the high pressure/intermediate pressure turbine component in violation of the Clean Air Act "without a proper permit and public process..." in March 2008. That statement is incorrect. PSNH worked closely with the ARD regarding the turbine project. After careful analysis, ARD determined that the turbine project did not require a permit. *See* March 31, 2008 letter from Craig A. Wright to

William Smagula. That entire process unfolded in a public manner and all of the materials pertaining to that decision were contained in the ARD files which were publicly accessible (and which have now been made part of the official record of the Scrubber permit appeal). Moreover, ARD records indicate that NHSC accessed the Merrimack Station permitting files at ARD on a number of occasions during the relevant time period.

NHSC also implies that the United States Environmental Protection Agency has taken an unusual action in issuing a section 114 information request to PSNH. In fact, the section 114 information request pertains to both Merrimack and Schiller Stations and is a routine request regarding capital projects completed at both Stations within a set timeframe. It is the third such request for information that PSNH has received in the last ten years and is considered to be in the normal course of business activity for a regulated power plant. Similar information requests have been sent out concurrently to a number of power plants across the country. The suggestion that PSNH is somehow being singled out, or that any particular activity at any of the PSNH facilities has driven the 114 information request, is simply wrong. In addition, the documents requested by EPA bear no relationship to NHSC's overly broad information requests in the Scrubber permit appeal proceeding for documents pertaining to boiler startup in the 1960s or detailed critical infrastructure engineering plans.

It is worth noting that NHSC in its introductory paragraph emphasizes that Merrimack Station is a major source of mercury. As NHSC well knows, the Scrubber project will reduce mercury by no less than 80%. Despite that significant public benefit, NHSC continues its attempts to delay or derail the Scrubber project. It is difficult to understand how an environmental organization can oppose the installation of a pollution control facility that will so dramatically benefit the citizens of New Hampshire.

In sum, PSNH supports ARD's effort to proceed with the Title V permit process and does not believe it should be delayed.

Yours truly,

Linda T. Landis

Linda T. Landis
Senior Counsel-PSNH

cc: Thomas Burack, Commissioner, DES
Robert Scott, Director, Air Resources Division, DES
Allen Brooks, Esq., Environmental Protection Bureau, Attorney General's Office
Evan Mulholland, Esq., Environmental Protection Bureau, Attorney General's Office
William H. Smagula, P.E., Director-PSNH Generation
Barry Needleman, Esq., McLane Law Firm
Arthur B. Cunningham, Esq., NHSC

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August 7, 2009

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AIR RESOURCES DIVISION

Michele Andy, Administrator
Permitting and Environmental Health Bureau
NH Dept of Environmental Services
Air Resources Division
PO Box 95
29 Hazen Drive
Concord, NH 03302

RE: Public Comment Period and Public Hearing Regarding Draft Title V Permit
PSNH – Merrimack Station
Facility ID #3301300026; Application #FY96 – TV048

Dear Ms Andy:

Thank you for your July 31, 2009, letter regarding the Draft Title V Operating Permit for the Public Service Company of New Hampshire Merrimack Station, Bow, NH. We are pleased that the public Title V process has commenced for Merrimack Station, a major source of Clean Air Act regulated pollutants, including hazardous pollutants such as mercury. The Application for this permit was filed on July 1, 1996, over 13 years ago.

You have scheduled the public hearing on the Draft Title V Permit on September 3, 2009. The written comment deadline is September 18, 2009.

<u>The public hearing date and comment deadline are unacceptable. The dates provide insufficient time for the critically important public participation process regarding the Draft Title V Permit.</u>

September 3, 2009, the date of the public hearing is the Thursday evening before the long Labor Day holiday. It is not uncommon for people to make plans for this holiday months, and sometimes much longer, in advance. The date will make it difficult, if not impossible, for the much of the public to properly examine and express comments on this major permit.

The September 18, 2009, comment deadline does not provide adequate time to examine the draft permit, the underlying data, emissions limits and compliance with the Clean Air Act

In addition to the concern we have about the impossibly short public participation timeline, there are matters pending that may have substantial consequences for the final Title V permit, including:

1. <u>In the Matter of the Temporary Permit TP – 0008 Public Service Company of New Hampshire Merrimack Station</u>, Docket No. 09 – 10, 09 – 11, New Hampshire Department of Environmental

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Services – Air Resources Council. The appeal challenges the Public Service Company of New Hampshire failure to include the major upgrade of the large turbine MK2 in the construction permit for the sulfur scrubber. The turbine project substantially increased the plant generating capacity and emissions of regulated pollutants. The project was necessary, according to the utility, because of the parasitic load of the scrubber and to extend the life of the over 50 year old plant.

The turbine project was done without a permit and public process in violation of RSA 125 – C: 11 and the Clean Air Act, 42 U.S.C. 741 *et seq.*

Major issues remain unresolved by the Air Resources Council. Public Service Company of New Hampshire has filed blanket objections to document discovery requested by New Hampshire Sierra Club. The Company refuses to provide information relating to <u>either</u> the scrubber project or the turbine project. The Sierra Club's Motions to Compel discovery are pending.

The final hearing in the appeal is tentatively scheduled for September 14, 2009, just days before the Title V permit comment period deadline; and, well before any appeal deadline from a decision by the Air Resources Council.

2. Three groups, including New Hampshire Sierra Club, have served Notices of Intent to file suit under 42 U.S.C. 7604, asserting, *inter alia*, violations of the Clean Air Act, including violations of 42 U.S.C. 7475 (a)(1) – (8) for the failure to obtain a permit under the Prevention of Significant Deterioration (PSD) program designed to prevent the further degradation of air quality and violations of 42 U.S.C. 7503 (a) – (d) for the failure to obtain a permit under the New Source Review (NSR) program. As you know, southern New Hampshire is in non-attainment for ozone; therefore, the NSR program is of particular concern to New Hampshire Sierra Club because of the substantial NOx emissions from Merrimack Station. NOx is a precursor to ozone.

The PSD/NSR programs, properly applied, require the installation of the best available control technology to optimally reduce emissions of regulated pollutants.

The Notices of Intent to file suit are pending.

3. The United States Environmental Protection Agency, Region 1, has initiated an investigation of the compliance status of Merrimack Station under the Clean Air Act. On April 3, 2009, the United States Environmental Protection Agency, Region 1, served a broad section 114 (a) information request under 42 U.S.C. 7414 *et seq* on Public Service Company of New Hampshire asking for documentation regarding the work done at Merrimack Station. The information requested is similar to the New Hampshire Sierra Club document request pending before the Air Resources Council.

The United States Environmental Protection Agency, Region 1, investigation is pending.

4. New Hampshire Sierra Club anticipates filing a 91 – A right to know requests regarding issues raised by the Draft Title V Operation Permit, including but not limited to:

a. Compliance with the State Implementation Plan [SIP];

b. Best available control technology (BACT) for NOx emissions because of the ozone non – attainment status of southern New Hampshire; and,

c. Maximum achievable control technology (MACT) for the hazardous air pollutant mercury. This is of particular concern to New Hampshire Sierra Club because of the early emissions reductions credits program prescribed by RSA 125 O: 16, I.

New Hampshire Department of Environmental Services – Air Resources Division must provide adequate time for the Title V public participation process. The public hearing and comment deadline should be deferred until after the various actions described above have ended. The Department should not rush the process at the expense of public participation or before the conclusion of the proceedings detailed above. A robust and thorough discussion of the Draft Permit, in the interest of public health, safety and the environment, will benefit us all.

New Hampshire Sierra Club requests that the public hearing on the Draft Title V permit be rescheduled to November 12, 2009, and the comment period deadline be extended to December 18, 2009.

Very truly yours,

Catherine M. Corkery, Chapter Director
New Hampshire Sierra Club

Arthur B. Cunningham, Attorney
New Hampshire Sierra Club

Cc: Lisa Jackson, Administrator, U.S. Environmental Protection Agency;
Ira W. Leighton, Regional Administrator, U.S. Environmental Protection Agency, Region 1;
Greg Dain, U.S. Environmental Protection Agency, Region 1;
John Lynch, Governor, State of New Hampshire;
Thomas Burack, Commissioner, New Hampshire Department of Environmental Services;
Robert Scott, Director, Air Resources Director, New Hampshire Department of Environmental Services;
Allen Brooks, Attorney, Environmental Protection Bureau, New Hampshire Department of Justice;
Linda T. Landis, Senior Counsel, Public Service Company of New Hampshire