UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Via Email and Regular Mail

August 21, 2018

Zachary M. Fabish
Senior Attorney
Sierra Club Environmental Law Program
50 F Street, NW – 8th Floor
Washington, DC 2001

Re: NPDES Permit for Merrimack Station

Dear Mr. Fabish:

This letter follows up on our phone call of July 26, 2018. I called in response to your letter of June 22, 2018, concerning EPA's schedule for issuing a new NPDES permit to the Merrimack Station power plant in New Hampshire. I was joined on the call by Sean Dixon, Senior Policy Advisor to EPA Region 1's Regional Administrator, Alexandra Dapolito Dunn, and by Ken Moraff, Director of EPA Region 1's Office of Ecosystem Protection (OEP).

Your letter indicates that "unless EPA states in writing that it will issue a final permit to Merrimack Station no later than September 1, 2018, Sierra Club will take legal action requesting mandamus relief to cure EPA's failure to act." In response, we called you to explain that we will be unable to issue the final permit by September 1, 2018, but also to provide assurance from the highest level within EPA Region 1 that completing the new Merrimack Station permit is the Region's highest priority for power plant NPDES permits, and that Region 1 staff are, and have been, working hard to finish the permit. We reported that we estimate being able to issue the final permit this coming winter and explained that whether this occurs earlier or later in the winter will depend on how the work develops with respect to certain difficult issues central to the permit. We also offered to call periodically in the months ahead to keep you apprised of whether we remain on track for this schedule.

Finally, we asked you to hold off on filing suit so that we can stay focused on completing the Merrimack Station permit, rather than on defending a law suit about it. We explained that a law suit will inevitably take substantial time away from staff efforts to finish the permit because the same attorneys and technical staff working on the permit will be forced to work on defending the litigation as well. Thus, a law suit would be counter-

productive to our shared goal of completing the new permit for Merrimack Station as soon as possible.

A law suit is not needed to get EPA to issue the final Merrimack Station permit. This is a job that EPA wants to complete. As you know, EPA Region 1 has issued new NPDES permits to many other important power plants in the absence of any litigation pushing them (*e.g.*, Brayton Point Station, Kendall Station, Seabrook Station, and the Wheelabrator-Saugus and General Electric Aviation facilities). Indeed, even after your two law suits over the Mt. Tom Station, Schiller Station and Merrimack Station permits were dismissed, EPA Region 1 completed the permits for Mt. Tom and Schiller and has continued working diligently to finish the Merrimack permit as quickly as possible. While we have been unable to complete the Merrimack permit as fast as we had hoped, that is only because several contingencies and competing priorities arose that also required our time and attention. Indeed, in the context of your most recent law suit, we had explained that these contingencies could potentially arise and slow the permit schedule. Yet, despite these events slowing us down, we have continued making progress and are working to issue the final Merrimack permit this coming winter.

We hope this letter helps to convey our commitment to completing the Merrimack Station permit as soon as possible. We are working hard on it and it is our highest priority for power plant NDPES permits. Again, we urge you to hold off on suing over the Merrimack permit because such a suit would be counterproductive to expediting issuance of the new permit. As stated above, we are also willing to call you on a regular basis to let you know whether we are on track regarding the permit schedule.

Please let me know if you have any questions about the above or would like to discuss the matter further. You can contact me at (617) 918-1077.

Thank you for your continued cooperation.

Sincerely,

Mark A. Stein
Senior Assistant Regional Counsel

cc (by email):
Mark Kresowik, Sierra Club
Alexandra Dapolito Dunn, Regional Administrator, EPA Region 1
Sean Dixon, Senior Policy Adviser, EPA Region 1
Ken Moraff, Director, OEP, EPA Region 1
Carl Dierker, Regional Counsel, EPA Region 1,
Damien Houlihan, Chief, NPDES Permits, OEP, EPA Region 1

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