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October 21, 2011

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**By e-Mail (webster.david@epa.gov) and Overnight Mail**

Mr. David Webster, Chief
Office of Ecosystem Protection
United States Environmental Protection Agency
NPDES Industrial Permit Branch (CIP)
5 Post Office Square - Suite 100, OEP06-1
Boston, MA 02109-3912

Re: Public Service Company of New Hampshire
Merrimack Station, Bow, New Hampshire
Draft NPDES Permit No. NH0001465

Dear Mr. Webster:

On September 29, 2011, EPA Region 1 gave notice of a draft NPDES permit for Public Service Company of New Hampshire's Merrimack Station in Bow, New Hampshire. Public comments can be submitted until November 30, 2011. By letter of October 11, 2011, the permittee asked that the comment deadline be extended 90 days.

The Utility Water Act Group (UWAG)[1] wishes to comment on the draft permit. UWAG supports the request for 90 additional days, until February 28, 2012, to comment for the reasons explained below:

[1] UWAG is a voluntary, *ad hoc*, non-profit, unincorporated group of 172 individual energy companies and three national trade associations of energy companies: the Edison Electric Institute, the National Rural Electric Cooperative Association, and the American Public Power Association. The individual energy companies operate power plants and other facilities that generate, transmit, and distribute electricity to residential, commercial, industrial, and institutional customers. The Edison Electric Institute is the association of U.S. shareholder-owned energy companies, international affiliates, and industry associates. The National Rural Electric Cooperative Association is the association of nonprofit energy cooperatives supplying central station service through generation, transmission, and distribution of electricity to rural areas of the United States. The American Public Power Association is the national trade association that represents publicly-owned (units of state and local government) energy utilities in 49 states representing 16 percent of the market. UWAG's purpose is to participate on behalf of its members in EPA's rulemakings under the CWA and in litigation arising from those rulemakings.

UWAG wishes to comment on the draft permit, but the two months provided for comment are not enough time. There are at least four reasons why more time should be allowed.

First, the issues raised by the draft permit are complex. All the major issues facing the electric utility industry under the Clean Water Act are addressed in this permit: what is best available technology for thermal discharges, what is a "balanced indigenous population" and is it protected, what is "best technology available" for withdrawals of cooling water, and what is the best technology for treating flue gas desulfurization wastewater.

Many subsidiary issues are raised by the permit, including these:

1. Was Region 1 correct to require closed-cycle cooling to minimize intake flow when EPA headquarters has never, except for "new" facilities and new units, found closed-cycle cooling to be required nationally under § 316(b) of the Clean Water Act?

2. Did Region 1 correctly use the data from the two plants it relied on, Belews Creek and Allen Steam Stations, to set limits for Merrimack? Were the data from those two facilities representative of the Merrimack Station?

3. Did the Region correctly define the "balanced indigenous population" of fish and wildlife that must be protected, in a waterway whose character has changed over the years?

4. Did Region 1 adequately consider the "cost" of biological treatment for flue gas desulfurization wastewater and of cooling towers? Can any of the technologies selected pass a reasonable cost-benefit or cost-effectiveness test?

The proposed permit has been administratively continued since 1997, and the newly proposed permit makes significant changes. In particular, Region 1 proposes to revoke the formerly approved alternative thermal limitation under § 316(a) and to change its previous determination under § 316(b). There will be significantly more requirements than previously applied, many of them complex. A thorough review by affected parties, taking into account all relevant facts, is prudent.

Second, the record does not permit rapid review. To comment on the permit, a commenter must go through a large amount of data in the docket, and the data cover biological, technological, and economic issues. UWAG has been working with Region 1 staff to get copies of the most important documents from the record, but it has been time-consuming. Region 1 does not maintain an electronic docket, and we are told that ordinarily commenters are expected

to come to Boston and get paper copies of the documents they need to review. Region 1 staff have been helpful in providing us with several documents and an administrative index of the proceeding, but the index we have received to date is incomplete, and staff told us that, as of October 19, they were still in the process of preparing for the Administrative Record for the Draft NPDES permit.

Third, apart from the information in Region 1's docket, there is an enormous mass of data outside the record that bear on this permit and will have to be considered by commenters. For example, EPA distributed a detailed questionnaire to hundreds of power plants, collecting volumes of data that are relevant. Throughout EPA's detailed study of the steam electric industry, UWAG has cooperated fully with EPA. We have supplied information about facility characteristics and appropriate analytical methods. EPA and UWAG also conducted a sampling program and measured, among other things, metals in flue gas desulfurization wastewater. Those data have not been published, and neither EPA headquarters staff nor UWAG has finished analyzing their respective data. But some of the data will be useful in commenting on the Merrimack draft permit.

Fourth, there is no need to rush the comment process. EPA headquarters is obligated to complete its rulemaking on cooling water intake structures by July 27, 2012. EPA is obligated to propose an effluent limitations guidelines rule by July 23, 2012. Hence, a mere nine months from now the intake rule will be final and EPA headquarters will have decided on its proposed requirements for flue gas desulfurization wastewater. With so much relevant information about to appear, and with 14 years already invested in reviewing the Merrimack permit application since it was filed, allowing too little time for comment risks producing a final permit that is inconsistent with national regulations soon to be finalized.

For these reasons, UWAG supports PSNH's request for 90 additional days to comment on the draft permit.

Yours very truly,

James N Christman

for Donna B. Hill
Robin J. Reash
Robert Matty
UWAG Committee Chairpersons