

# United States Court of Appeals For the First Circuit

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No. 16-2415

IN RE: SIERRA CLUB, INC.,

Petitioner.

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PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE,

Intervenor.

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Before

Howard, Chief Judge,  
Lynch and Thompson, Circuit Judges.

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## JUDGMENT

Entered: April 19, 2017

Petitioner Sierra Club has filed a renewed petition for a writ of mandamus, arguing that the EPA has unreasonably delayed reissuing NPDES permits to two steam electric power plants in New Hampshire, Merrimack Station and Schiller Station. In 2013, we denied Sierra Club's earlier mandamus petition, which argued unreasonable delay with respect to Schiller and a different power plant, Mt. Tom Station in Massachusetts, whose permit has since been reissued. See In re Sierra Club, Inc., 2013 WL 1955877 (1st Cir. May 8, 2013) (Judgment).

We have considered the various submissions. We conclude that, under the circumstances presented here, the "drastic remedy" of mandamus is not warranted. Id., citing Towns of Wellesley, Concord & Norwood, Mass. v. FERC, 829 F.2d 275, 277 (1st Cir. 1987). While the delays in reissuing these NPDES permits continue to be concerning and extensive, the EPA has issued draft permits to both facilities and is working on finalizing these complex permits, while balancing competing priorities with its limited resources. Sierra Club has not met its burden, on this record, of showing that the court should step in to reprioritize the EPA's work.

The EPA estimates that it will issue final permits to both facilities by the end of 2017. While we decline to enforce this schedule, we expect the EPA to work diligently to complete these permits.

The renewed petition for a writ of mandamus is denied.

By the Court:

/s/ Margaret Carter, Clerk

cc:

Howard Crystal  
Heather Gange  
Ronald Barze, Jr.  
Spencer Taylor