

File Memorandum

Date: March 1, 2018

From: Mark Stein, Senior Assistant Regional Counsel, Office of Regional Counsel

To: NPDES Permit Files for Schiller Station and Merrimack Station Permits

Re: February 20, 2018, Meeting Between Representatives of EPA Region 1 and Granite Shore Power, LLC (New Owner/Operator of the Schiller, Merrimack and Newington Station Power Plants in New Hampshire)

On January 10, 2018, Granite Shore Power LLC (GSP) closed on its purchase of the following electrical generating facilities from Public Service Company of New Hampshire (PSNH): Schiller Station (Schiller); Merrimack Station (Merrimack); Newington Station (Newington); the Lost Nation Facility; and the White Lake Facility. On December 26, 2017, prior to the closing, GSP's President, James Andrews, had written to EPA Region 1 requesting a meeting. Noting that the power plants it was purchasing are "subject to various laws administered by EPA Region 1," GSP suggested that "such a discussion will help to achieve our shared goals of environmental protection and effective operation of the facilities."

Region 1 agreed to the requested meeting, which was held on February 20, 2018. EPA earlier transferred the NPDES permits for Schiller, Merrimack and Newington from PSNH to GSP. This memorandum summarizes the discussion at the meeting. The following people attended the meeting:

- for EPA: Regional Administrator Alexandra Dunn; Deputy Regional Administrator Deborah Szaro; OEP NPDES Permits Chief, David Webster; John Moskal, OEP Air Office; and myself; and
- for GSP: GSP President James Andrews; David Filippelli, Principal, Atlas Holdings (Atlas); Duane Duclaux, Deputy General Counsel, Castleton Commodities International LLC (CCI); and GSP's outside counsel P. Stephen Gidiere, III, of Balch & Bingham.

GSP is a wholly owned subsidiary and joint venture of CCI and Atlas.

After introductions, the discussion focused on the Schiller and Merrimack power plants and their NPDES permits. GSP indicated that, as the new owners of the facilities, they felt it appropriate to meet with EPA Region 1 as quickly as reasonably possible. They also mentioned that they had attended a recent meeting in New Hampshire regarding renewable fuels that was attended by New Hampshire officials as well as EPA Administrator Scott Pruitt.

GSP indicated that the coal-burning units at Schiller and Merrimack had been operating as peaking units, particularly during cold winter conditions, and that these units would continue to operate in this manner for the foreseeable future. They also stated that the wood/biomass-burning unit at Schiller (Unit 5) runs on a more frequent basis and they expected it would continue to do

so for the foreseeable future. EPA indicated that it was aware of the operational profiles of the facilities but was interested to hear GSP's expectations for the future.

GSP stated that unlike PSNH, it is not a regulated public utility and cannot necessarily count on passing its compliance costs on to its ratepayers. GSP also suggested that as the new owners of Schiller and Merrimack, it wanted to provide its views related to the facilities' new NPDES permits and it expected that EPA would want to receive those views. EPA indicated that it understood that GSP is a merchant generator and not a public utility. EPA also explained that while it was not disinterested in GSP's views about the permits, the comment periods for both NPDES permits, including the recently reopened comment period for the Merrimack permit, were closed. The Merrimack comment period closed on December 18, 2017. EPA noted that GSP was well aware of this and was represented by the same outside counsel, Balch & Bingham, that had represented PSNH in the permit proceedings. GSP suggested that comments/materials are often submitted to agencies after the close of a comment period. EPA agreed that such post-comment-period submissions are not unusual, but pointed out that EPA has discretion about whether and how to consider and respond to any such late submissions. GSP agreed with this observation. EPA also explained that it would handle any late submissions in a publicly transparent way consistent with all applicable statutory, regulatory and policy directives.

EPA suggested that it would be helpful to distinguish between the Schiller and Merrimack permits in the discussion. EPA noted that it expected to finish the Schiller permit relatively soon, in the coming weeks, and would do so well before it could finish the Merrimack permit. EPA explained that this was unavoidable because the comment period for Merrimack had needed to be reopened and had closed only recently, on December 18, 2017. Moreover, EPA noted that it had received voluminous new comments that would need to be reviewed, considered and responded to. EPA reminded GSP that the Agency had been sued twice by Sierra Club regarding delays in reissuance of the Schiller permit and that EPA had indicated to the court that we were striving to issue the permits by December 2017, but had also explained that this date could require adjustment if certain contingencies occurred. EPA then explained that while it had been working diligently toward the December 2017 dates, a number of the contingencies had, in fact, occurred and necessitated later issuance dates. That said, EPA was hoping to issue the Schiller permit very soon and then focus attention back to the Merrimack permit.

GSP indicated that it agreed that it made sense that the Schiller permit would be issued before the Merrimack permit. With regard to Schiller, GSP asked whether the permit was affected by developments regarding the new Steam-Electric ELGs. EPA indicated that it was not because Schiller has neither FGD wastewater nor bottom ash transport water discharges. GSP indicated that it wanted to have a chance to weigh in on the parameters that would govern a wedgewire screen installation. EPA stated that it could not prematurely reveal the terms of the Final Permit but noted that PSNH had requested the same opportunity in the nature of a pilot study with regard to wedgewire screens and that EPA would be considering and responding to this comment in the context of the Final Permit. GSP understood. GSP also understood that the final permit for Schiller was imminent and that when it was ready for issuance, EPA would give GPS a courtesy call a day or two before the permit was publicly released.

Turning to the Merrimack permit, GSP indicated that it had only paid around \$100 million for the full set of PSNH facilities and it was not, therefore, going to spend \$100 million just to add cooling towers at Merrimack. Again, it noted that it could not necessarily pass those costs on to consumers. It also noted that putting the economics aside, it feels that the comments and reports submitted by PSNH have established that Merrimack should not be required to install cooling towers. EPA indicated that it would consider the comments submitted by PSNH, including the comments submitted during the recently completed comment period. EPA also noted that it was interested in GSP's indication that it expected to continue operating solely as a peaking plant for the foreseeable future. EPA explained that in the record for the Merrimack permit, EPA had discussed the fact that Merrimack's generating units were no longer operating as baseload units and had become, in effect, peaking units, and that there was no reason to expect this operating profile to change. (Indeed, EPA had noted that some were predicting closure of the facilities.) EPA noted that it had, nevertheless, analyzed and developed the permit as if Merrimack Station still operated as a baseload plant because PNSH had requested a permit authorizing such operations and was not prepared to alter that request. EPA asked whether GSP might be willing to entertain a permit with limitations that reflected the reality of Merrimack Station's more limited operations. The company said that it would potentially be willing to do so. GSP asked what the conditions of such a permit would be. EPA indicated that it was something that we would could contemplate as we worked on considering and responding to the comments before us.

Turning to the issue of the Steam-Electric ELGs, Region 1 noted that EPA had delayed the compliance deadlines for both the FGD wastewater limits and the bottom ash transport water discharges because the Agency was reconsidering those ELGs in response to petitions for such reconsideration. EPA noted, however, that it currently understood that the "Voluntary Compliance Incentive" provisions of the new ELGs (pertaining to FGD wastewater) remained in effect and that PSNH had, so far, indicated its intention of complying with those provisions. GSP indicated that, at least so far, that remained the plan for Merrimack Station.