

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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In re: )  
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Granite Shore Power Merrimack LLC ) NPDES Appeal No. 20-\_\_  
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NPDES Permit No. NH0001465 )  
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**CONSENT MOTION REGARDING BRIEFING SCHEDULE AND WORD  
LIMITS FOR PETITION(S) FOR REVIEW, RESPONSE(S), AND REPL(IES)**

Sierra Club, Inc. (“Petitioner”), with the consent of the Environmental Protection Agency Region 1 (“EPA”) and Granite Shore Power Merrimack LLC (the “Permittee”), hereby respectfully requests that the Environmental Appeals Board (“EAB”) issue an order establishing a briefing schedule that extends the time for filing Petition(s) for Review of NPDES Permit No. NH0001465 (“the Permit”), Response(s), and Repl(ies), and enlarges the word counts for those filings, as follows:

<u>Filing</u>	<u>Due Date</u>	<u>Word Limit</u>
Petition(s) for Review <sup>1</sup>	Monday, July 27, 2020	18,000
Response(s) <sup>2</sup>	Friday, September 25, 2020	18,000

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<sup>1</sup> This motion requests that the extended deadlines and enlarged word counts for Petition(s) for Review and Repl(ies) apply to: (i) Petitioner and any of its co-commenters who join Petitioner in a joint Petition for Review; and (ii) the Permittee, if it chooses to file a Petition for Review.

<sup>2</sup> This motion requests that this extended deadline and enlarged word count apply to: (i) EPA; and (ii) the Permittee, if it chooses to file a Response to Petitioner’s Petition for Review. If both Petitioner and the Permittee file separate Petitions for Review, Petitioner and the Permittee recognize that the Response word limit will apply separately to each of EPA’s Responses to the Petitions. Petitioner and the Permittee also recognize that EPA reserves the right to seek additional time, if it deems it necessary, in order to respond to these two separate Petitions for Review, if two are filed. In addition, Petitioner further recognizes that EPA and the Permittee reserve their rights to seek additional time and word limits, as they may deem necessary, to any additional Petitions for Review that may be filed in this case by other parties. This motion

In support of this motion, Petitioner states as follows:<sup>3</sup>

### **BACKGROUND**

1. The Permittee owns and operates the Merrimack Power Station (the “Station”) in Bow, New Hampshire.
2. The Station withdraws water from and discharges pollutants to the Merrimack River pursuant to a NPDES permit that was issued in 1992, expired in 1997, and has been administratively continued under 40 C.F.R. § 122.6 for the past 23 years.
3. In 2011, EPA issued a draft renewal permit for the Station for public comment.<sup>4</sup>
4. In 2014, issued a revised draft renewal permit for the Station for public comment.<sup>5</sup>
5. In 2017, without issuing a further revised draft renewal permit, EPA reopened the public comment period for a third time, seeking responses to a “Statement of Substantial New Questions for Public Comment” due to “new data, information, and arguments pertinent to certain aspects of the permit.”<sup>6</sup>
6. During the three comment periods, Petitioners commented on the draft renewal

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addresses deadlines and word limits only; nothing in this motion seeks to expand the number or type of filings that are permissible in this proceeding. The parties reserve all rights to oppose or object to any other party’s filing.

<sup>3</sup> EPA and the Permittee have consented to the relief requested herein, but do not necessarily agree with all of the statements made by Petitioner.

<sup>4</sup> <https://www.epa.gov/npdes-permits/merrimack-station-draft-npdes-permit#tab-3>

<sup>5</sup> <https://www.epa.gov/npdes-permits/merrimack-station-draft-npdes-permit#tab-2>

<sup>6</sup> <https://www.epa.gov/npdes-permits/merrimack-station-draft-npdes-permit#tab-1>

permits and the Statement of Substantial New Questions for Public Comment. Petitioners were joined in some of their comment letters by other environmental organizations with an interest in the Merrimack River.

7. EPA signed the final Permit on May 22, 2020, and gave notice of the Permit on May 26, 2020. A copy of the Permit and its cover letter are attached hereto as Exhibits 1 and 2.

8. The Permit states that it shall become effective on September 1, 2020.

9. EPA's Response to Comment for the Permit comprises 750 pages, is divided into eight chapters, and addresses, among other things: (1) thermal pollution issues; (2) cooling water intake structures; (3) bottom ash transport water, landfill leachate and coal pile run-off; and (4) flue gas desulfurization wastewater.<sup>7</sup>

10. Petitioners and their co-commenters commented on and have a substantial interest in all of the issues listed in the previous paragraph as they pertain to the Merrimack River.

11. The online Administrative Record for the Permit presently (as of June 12, 2020) contains 1,886 documents.<sup>8</sup>

12. Pursuant to 40 C.F.R. § 124.19(a)(3), Petitions for Review are due on June 25, 2020, unless extended by the EAB.

### **REASONS FOR GRANTING THE RELIEF REQUESTED**

Petitioners respectfully submit that the standard 30-day time period is insufficient under the circumstances for them to fully evaluate the Permit and its record and to prepare a Petition for Review. Petitioners believe that good cause exists for an extension of time given, among

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<sup>7</sup> <https://www3.epa.gov/region1/npdes/merrimackstation/pdfs/final/merrimack-final-rtc-all-chapters.pdf>

<sup>8</sup> <https://www.epa.gov/npdes-permits/merrimack-station-administrative-record>

other things: (i) the lengthy regulatory history, (ii) the voluminous Administrative Record and Response to Comments, (iii) the number of issues involved, and (iv) the Covid-19 pandemic, as the offices of Petitioners and their counsel remain closed, and their staffs are all working from home, which complicates and delays certain aspects of their work. Petitioners believe that an expansion of the word limit is warranted given the number of issues involved and the length of the Administrative Record and Response to Comments.

Petitioner intends to file a Petition for Review based on a thorough review of the final Permit and its extensive record. Petitioner and its counsel are presently reviewing the Permit, the Response to Comments, and the Administrative Record, as are other environmental organizations that joined its comments on the draft permits. Because a Petition for Review in an EAB proceeding is not merely a pleading but also serves as Petitioner's opening brief, Petitioner seeks additional time to identify the pertinent issues and to prepare the anticipated appeal. Petitioners believe that the EAB, the other parties, and the public interest will benefit by allowing Petitioner sufficient time and words to fully address the important issues in this proceeding and to present them in a thorough, cogent, and concise manner in its Petition for Review.

The requested briefing schedule reflects a 30-day extension of time to file a Petition for Review (plus two additional days to move the new deadline from a Saturday to a Monday), a commensurate 30-day extension for the Response(s), and a 15-day extension for Repl(ies). The word counts represent a 28.5% increase from the lengths allowed by the rules.

Pursuant to 40 C.F.R. § 124.19(f)(2), Petitioner contacted EPA and the Permittee to ascertain their positions as to Petitioner's extension request. The parties conferred and reached agreement on the proposed briefing schedule requested herein, in order to avoid a contested

motion. EPA and the Permittee requested commensurate extensions of time and word limits, which are reflected in the proposed briefing schedule. Petitioner understands that the reasons supporting EPA's and the Permittee's requests include the number and complexity of the issues that Petitioner may raise in its Petition for Review and, for EPA, the need to coordinate its responses on these issues with the relevant offices at EPA Headquarters, including the Office of General Counsel. Finally, Petitioner further understands that EPA and the Permittee believe they should have an equal amount of time and space as Petitioners.

### CONCLUSION

For these reasons, Petitioner respectfully requests that that the EAB issue an order establishing the following briefing schedule and word limits:

<u>Filing</u>	<u>Due Date</u>	<u>Word Limit</u>
Petition(s) for Review <sup>9</sup>	Monday, July 27, 2020	18,000
Response(s) <sup>10</sup>	Friday, September 25, 2020	18,000
Repl(ies)	Monday, October 25, 2020	9,000

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<sup>9</sup> The extended deadlines and enlarged word counts for Petition(s) for Review and Repl(ies) apply to: (i) Petitioner and any of its co-commenters who join Petitioner in a joint Petition for Review; and (ii) the Permittee, if it chooses to file a Petition for Review.

<sup>10</sup> The extended deadline and enlarged word counts for Response(s) apply to: (i) EPA; and (ii) the Permittee, if it chooses to file a Response to the Petition for Review. If both Petitioner and the Permittee file separate Petitions for Review, Petitioner and Permittee recognize that the Response word limit will apply separately to each of EPA's Responses to the Petitions. Petitioner and the Permittee also recognize that EPA reserves the right to seek additional time, if it deems it necessary, in order to respond to these two separate Petitions for Review, if two are filed. In addition, Petitioner further recognizes that EPA and the Permittee reserve their rights to seek additional time and word limits, as they may deem necessary, to any additional Petitions for Review that may be filed in this case by other parties.

Dated: June 12, 2020

Respectfully Submitted,

/s/ Reed W. Super

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**CERTIFICATE OF SERVICE**

I, Reed W Super, hereby certify that on June 12, 2020, I caused to be served a true and correct copy of the foregoing Motion to the following by email (with their consent to service by email):

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