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Via Electronic and First Class Mail

June 28, 2013

Debra A. Howland  
 Executive Director & Secretary  
 New Hampshire Public Utilities Commission  
 21 South Fruit Street, Suite 10  
 Concord, New Hampshire 03301-2429

**Re: The Sierra Club's Comments on the Report on Investigation into Market Conditions Affecting PSNH and its Default Service Customers and the Impact of PSNH's Ownership of Generation on the Competitive Electric Market, Docket No. IR 13-020**

Dear Secretary Howland,

The Sierra Club submits the following comments concerning the June 7, 2013 Report in Docket No. IR 13-020, jointly prepared by the Staff of the New Hampshire Public Utilities Commission ("PUC") and the Liberty Consulting Group.

## **BACKGROUND**

On January 18, 2013, the PUC opened docket IR 13-020 (originally "DE 13-020") to investigate market conditions affecting Public Service Company of New Hampshire ("PSNH"), its ability to provide power at reasonable rates, and "PSNH's continued ownership and operation of generation facilities." Order of Notice at 1. Parties, including the Office of the Consumer Advocate ("OCA") and the Sierra Club, requested the ability to participate in the docket. See OCA Letter of Participation, January 25, 2013; Sierra Club Request for Intervenor Status, February 25, 2013. The PUC indicated that, while it did not believe that intervention or party status was appropriate, it did "welcome participation" by outside groups, and that it had "instructed Staff to reach out to all stakeholders" as part of the investigation. See Secretary Letter Informing OCA that No Intervention is Needed, February 13, 2013; Secretary Letter Informing Sierra Club that No Intervention is Needed, March 6, 2013.

On June 7, 2013, the PUC Staff released its Report jointly prepared with the Liberty Consulting Group; simultaneously, the PUC released a letter opening up a three-week public comment period on the Report, lasting until June 28, 2013. Accordingly, these comments are timely.

## SUBSTANTIVE COMMENTS

The Sierra Club largely agrees with the conclusions of the Report: PSNH's fossil-fired assets, in particular Merrimack and Schiller Station, are not competitive generation resources and have essentially no value. As a result, these facilities should be retired, and the PUC should open up a public docket to address the Report's conclusions and effectuate the next steps for PSNH's facilities as soon as possible.

### A. The Merrimack and Schiller Station Coal-Fired Generation Assets Should Be Retired

The Sierra Club agrees fully with the Report's assessment of the value of the Merrimack and Schiller Station coal-fired generating units. Because these units are effectively of no (or even negative) value, they should be retired. Indeed, consideration of some of the looming environmental compliance cost issues for the two facilities that were not discussed in the Report only bolsters the conclusion that they should be retired.

#### 1. *The Merrimack and Schiller Station Coal-Fired Units have Dubious Value*

The Report notes that its discounted cash flow analysis for Merrimack results in a *negative* value for the facility, and that this analysis does not include the "\$111 million in capital expenditures for a cooling tower" as required in the draft National Pollutant Discharge Elimination System ("NPDES") permit for the plant. Report at 36. Similarly, the Report's discounted cash flow analysis for Schiller's coal firing units 4 and 6 results in an even more solidly negative valuation. *Id.* at 37.

These analyses do not consider a further wide range of forthcoming environmental compliance costs, moreover. For example, in addition to the draft NPDES permit and the requirements therein for Merrimack, Schiller is operating under a NPDES permit that expired in 1995. EPA is currently preparing a renewal draft NPDES permit for the facility, which is expected to include numerous updated requirements for pollution controls—such as effluent treatment, cooling towers, improved fish screening technology, among others—consistent with other NPDES permits EPA has recently been issuing for coal-fired power plants, reflecting the advancements in pollution control technology during the past 23 years.

Similarly, New Hampshire Department of Environmental Services ("DES") has recently indicated that it will, this summer, address the expired Title V permit for Schiller's air emissions. As part of this process, DES must set limits on a case-by-case basis for stationary sources like Schiller to insure that air pollution does not cross state lines and cause nonattainment of air quality standards, which may result in lower emission limits for pollutants like sulfur dioxide ("SO<sub>2</sub>"). Notably, Schiller Station currently lacks any controls for SO<sub>2</sub> pollution.

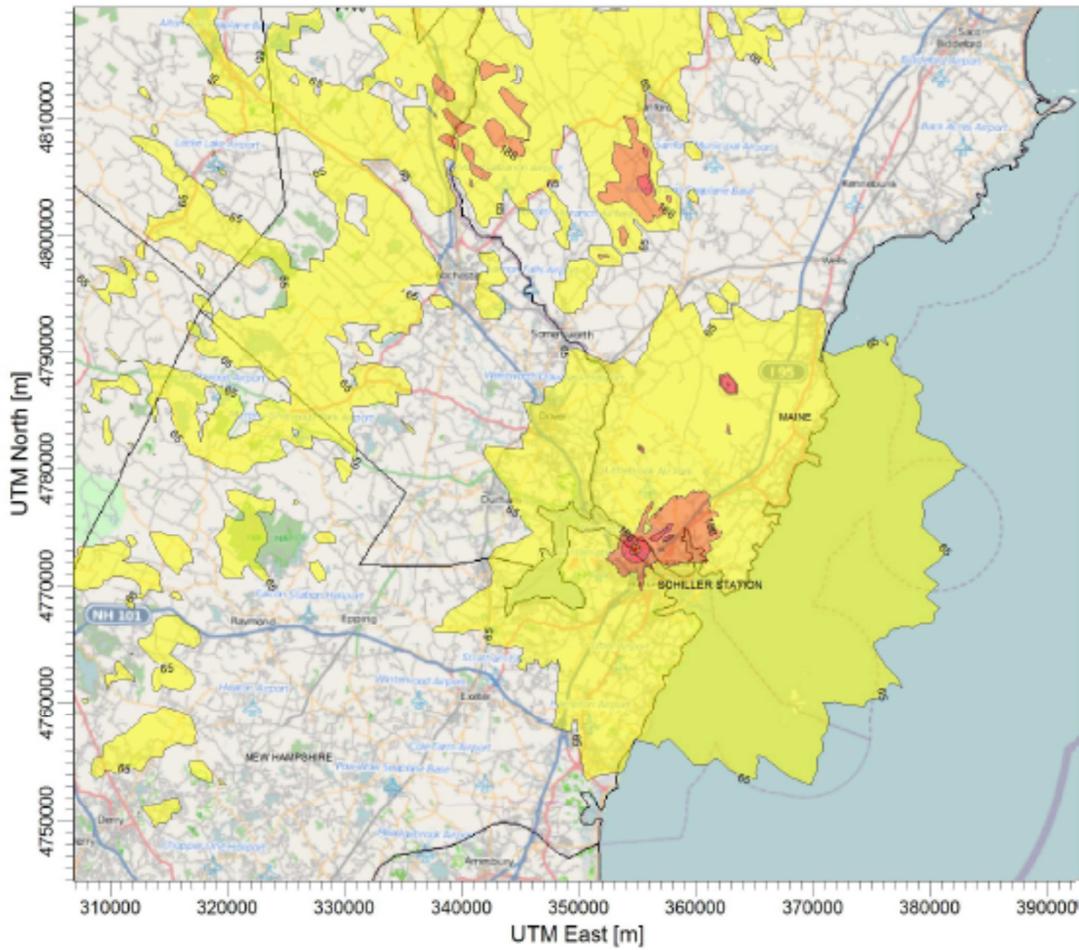
Under the CAA, New Hampshire is charged with preventing air pollution emitted within its boundaries from blowing into adjoining states and causing violations of air quality standards there. Section 110 of the CAA requires that states adopt regulations "prohibiting . . . any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will . . . contribute significantly to nonattainment in, or interfere with maintenance by, any

other State with respect to any such national primary or secondary ambient air quality standard”.  
42 U.S.C. § 7410(a)(2)(D).

Under NH DES’s own federally-approved regulations in its State Implementation Plan (“SIP”), this means that New Hampshire must “**apply special emission limits to stationary sources** on a case-by-case basis **to insure** that their air quality impacts on adjacent states . . . **shall not prevent the attainment or maintenance of National Ambient Air Quality Standards in those states.**” Env-A 616.01 (emphasis added).

Here, Schiller Station most certainly does send much of its air pollution, including SO<sub>2</sub> pollution, out of New Hampshire and into Maine, as Schiller is located just across the Piscataqua River from Maine. Moreover, air dispersion modeling shows that the pollution from Schiller—even with the emission limits in the proposed draft temporary permit—spreads over a vast area in both states:

**Figure 3 - Regional View**  
**1-hour SO<sub>2</sub> NAAQS Compliance Analysis for Schiller Station, NH**



**1 HOUR AVERAGE SO<sub>2</sub> CONCENTRATIONS (UG PER CUBIC METER)**



<p>65 ug/m<sup>3</sup> exceeds NAAQS with New Hampshire background.</p> <p>186 ug/m<sup>3</sup> exceeds NAAQS with Maine background.</p> <p>This figure is based on the proposed allowable emissions for Units 4 and 6 of 2.4 lbs per mmbtu.</p>	Total Sources	Conducted on behalf of the Sierra Club	
	Total Receptors	by Wingra Engineering, S.C.	
	Output Type	SCALE:	1:540,943
	Concentration		
Maximum	DATE:		
542.47562 ug/m <sup>3</sup>	08/29/12		

Klafka Report Fig. 3, attached hereto as Exhibit 1.

Indeed, the modeling shows that Schiller Station is predicted to cause peak concentrations of SO<sub>2</sub> in Maine of 553 µg/m<sup>3</sup>, compared to the NAAQS standard of 196 µg/m<sup>3</sup>. Klafka Report at 3. Notably, the impacts in Maine are *higher* than those in New Hampshire. *Id.* Thus, Schiller is likely facing significant reductions in its allowable SO<sub>2</sub> emissions in the very near future.<sup>1</sup>

Also on the horizon for both Merrimack and Schiller are further tightening of the ozone National Ambient Air Quality Standard and potential carbon dioxide emission limits.<sup>2</sup> Resolving these pollution issues for the plants will require additional investment or constraints on operation that may impact their ability to be competitive with cleaner, better controlled competing sources of power.

At end, Merrimack and in particular Schiller Station are extremely old facilities with boilers dating to the 1950s and 1960s, and they lack numerous environmental controls such as cooling towers for thermal pollution, advanced intake screening systems to minimize entrainment and impingement mortality for aquatic life, and, in the case of Schiller, air pollution controls to address SO<sub>2</sub> and MATS compliance. As a result, these facilities are unlikely to have long-term economic viability, and should be retired.

## 2. *Retirement of the Merrimack and Schiller Station Coal-Fired Units Would Protect Ratepayers*

The Report's analysis shows that retiring or divesting PSNH's fossil-fired generation assets would result in the lowest costs to ratepayers. The Report determines that the default service charge would be in the range of \$0.08370 to \$0.07369 per kWh, should the plants be divested or retired. Report at 47. This is based on procurement of power through competitive solicitation combined with stranded costs from the divestment or retirement of the assets. *Id.* In comparison, nearly every single scenario examined by the report for future default service rates in the absence of some sort of divestment or retirement is *higher* than even the high end of the range of projected charges with divestment or retirement. *Id.* at 26, tbl. 3. The only exception is the scenario in which PSNH receives no recovery for its scrubber construction at Merrimack—and in which migration rates do not change, coal prices do not go up, and gas prices do not go down—with a projected cost of \$0.0835 per kWh, nearly identical to the *high end* post-divestment or retirement price. Plainly, retaining the assets is a bad deal for ratepayers, and is likely to only accelerate the migration problems facing PSNH.

Although retirement of the assets is the best deal for ratepayers, it is critical to recognize that a terrible result for both ratepayers and the environment would be for PSNH to divest the facilities with the book value (which the Report correctly notes is wildly inflated from any likely market value) of the units incorporated into stranded cost recovery; the PUC should not countenance such a result. PSNH arrived at the untenable situation it now finds itself in through a failure to anticipate shifts in the market, and ratepayers should not be left holding the bag for that failure.

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<sup>1</sup> This is of course in addition to the ongoing SO<sub>2</sub> NAAQS implementation process referenced in the Report.

<sup>2</sup> See, for example, the President's recent directive to EPA "to issue standards, regulations, or guidelines, as appropriate, that address carbon pollution from modified, reconstructed, and existing power plants . . . by no later than June 1, 2015." <http://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards>.

B. Public Participation in Further Processes Flowing from the Report's Recommendation Is Vital

Now that the investigatory docket IR 13-020 has resulted in a report, it is time to open a full docket with party participation. The Sierra Club fully agrees with the Report's recommendation that the PUC "open[] a proceeding to receive comments and recommendations from PSNH and other stakeholders regarding this report and the issues it addresses." Report at 54. This investigatory docket, and the conclusions in the Report, were contemplated in part as a replacement for docket actions that would be open to public participation. As part of its resolution of Docket No. DE 10-261, the 2010 PSNH Least Cost Integrated Rate Plan ("LCIRP") docket, the PUC ordered that a full subsequent LCIRP process would not be necessary, as the investigatory Docket No. IR 13-020 "may address some of the parties' concerns in this LCIRP proceeding" and thus in order to "avoid redundancies and . . . administrative burden," IR 13-020 would function in lieu of that full LCIRP. Order No. 25,459 at 21.

However, while a LCIRP docket would involve direct intervenor participation—such as through submission of testimony, briefing, and promulgation of data requests—as well as public availability of docket materials, that level of public access and participation was not available in IR 13-020. Accordingly, any substantive action taken in response to the Report (and the information collected by and cited in the Report mitigate heavily in favor of substantive action being taken) by the PUC must be in the context of a full docket with party participation. Indeed, it is a basic principle of due process, underscored in various provisions of New Hampshire law, including the Administrative Procedures Act, and New Hampshire Supreme Court case law, that this Commission has followed throughout its existence, that affected parties be given a full and fair opportunity to participate in proceedings before the Commission.

## CONCLUSION

For the foregoing reasons, the Sierra Club urges the PUC to open a docket to address the conclusions of the Report, including the propriety of retiring the Merrimack and Schiller Station coal-fired generating units, as soon as possible.

Sincerely,

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