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## GSP MERRIMACK LLC

October 13, 2021

### VIA E-MAIL

Damien Houlihan, Section Chief  
Industrial Permits Section  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

Re: Notice of Planned Participation in the “Low Utilization Electric Generating Unit” Compliance Subcategory for Units 1 & 2 of **Merrimack Station (NPDES Permit No. NH0001465)**

Dear Mr. Houlihan:

In accordance with 40 C.F.R. § 423.19(e), please allow this to serve as GSP Merrimack LLC’s (“GSP Merrimack” or the “Company”) “Notice of Planned Participation” indicating its intent to comply with EPA’s 2020 *Steam Electric Reconsideration Rule* by conforming with the Rule’s provisions relating to “low utilization electric generating units”<sup>1</sup> for Units 1 & 2 of Merrimack Station (hereinafter the affected units and facility are collectively referred to as “Merrimack Station”).

### **I. Regulatory Background**

On October 13, 2020, EPA published a new rule in the Federal Register entitled the *Steam Electric Reconsideration Rule* (hereinafter the “2020 ELG Rule”).<sup>2</sup> The 2020 ELG Rule established new best available technology economically achievable (BAT) effluent limitations and associated compliance timelines for flue gas desulfurization wastewater (FGDW) and bottom ash transport water (BATW) generated at existing steam-electric power plants.<sup>3</sup> Instead of imposing a single, one-size-fits-all BAT for FGDW and/or BATW, the 2020 ELG Rule established several alternative compliance options that regulated entities may opt into and transfer among, subject to specified requirements. More specifically, the 2020 ELG Rule allows regulated entities to choose either to comply with default, generally applicable limitations,<sup>4</sup> or

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<sup>1</sup> 40 C.F.R. § 423.19(e)(1).

<sup>2</sup> EPA, *Steam Electric Reconsideration Rule*, 85 Fed. Reg. 64,650 (Oct. 13, 2020) (codified at 40 C.F.R. Part 423).

<sup>3</sup> See generally *id.*

<sup>4</sup> 40 C.F.R. §§ 423.13(g)(1)(i) (FGDW), 423.13(k)(1)(i) (BATW).

with the conditions and limitations applicable to one of the following three compliance options (hereinafter collectively referred to as “subcategories” or individually as a “subcategory”):<sup>5</sup>

- (1) Low utilization electric generating units (LUEGU);<sup>6</sup>
- (2) The Voluntary Incentives Program (VIP);<sup>7</sup> or
- (3) Permanent cessation of coal combustion.<sup>8</sup>

If a facility wishes to comply with the permit conditions and effluent limitations associated with one of these subcategories, it may do so by submitting a Notice of Planned Participation (NOPP) to its permitting authority by October 13, 2021.<sup>9</sup> Additionally, the 2020 ELG Rule allows facilities to automatically transfer among various compliance options by filing subsequent NOPPs, subject to various other deadlines and requirements.<sup>10</sup>

On August 3, 2021, EPA published in the Federal Register a “Notice of Rulemaking Initiative” pertaining to the effluent limitation guidelines applicable to steam electric power generating facilities (including the 2020 ELG Rule).<sup>11</sup> In it, the agency announced its intent to evaluate whether limitations more stringent than those in the 2020 ELG Rule are required for BATW and/or FGDW and whether changes should be made to any of the established subcategories with less stringent limitations.<sup>12</sup> EPA expects this rulemaking to take multiple years to complete and explicitly provided that it “expects permitting authorities to continue to implement the current regulations while the Agency undertakes a new rulemaking.”<sup>13</sup>

## II. Relevant Factual Background

EPA Region 1 issued the final version of Merrimack Station’s current NPDES permit on May 22, 2020, with an effective date of September 1, 2020 (Permit).<sup>14</sup> At that time, EPA had

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<sup>5</sup> Additional subcategories exist under the 2020 ELG Rule; however, these additional subcategories are inapplicable to Merrimack Station and are therefore not discussed in this correspondence.

<sup>6</sup> 40 C.F.R. §§ 423.13(g)(2)(iii) (FGDW), 423.13(k)(2)(iii) (BATW).

<sup>7</sup> *Id.* § 423.13(g)(3)(i) (FGDW). The voluntary incentives program applies only to FGDW, not BATW.

<sup>8</sup> *Id.* §§ 423.13(g)(2)(i) (FGDW), 423.13(k)(2)(ii) (BATW).

<sup>9</sup> *See id.* §§ 423.19(e)(1), (f)(1), and (h)(1).

<sup>10</sup> *See id.* §§ 423.13(o), 423.19(i).

<sup>11</sup> 86 Fed. Reg. 41,801 (Aug. 3, 2021).

<sup>12</sup> *Id.* at 41,802.

<sup>13</sup> *Id.*

<sup>14</sup> *See generally* NPDES Permit No. NH0001465, <https://www3.epa.gov/region1/npdes/merrimackstation/pdfs/final/merrimack-final-permit.pdf>. Unrelated (*i.e.*, non-FGDW and –BATW) portions of the Permit were appealed to

initiated efforts to revisit its 2015 ELGs rulemaking, but the final 2020 ELG Rule did not become effective until December 14, 2020.<sup>15</sup> As such, Merrimack Station's Permit does not include conditions implementing the 2020 ELG Rule. The Permit does, however, include the following provision: "This permit may be modified in accordance with 40 CFR Section 122.62(a)(3) if the standards or regulations on which the permit is based have been changed by promulgation of amended standards or regulations[.]"<sup>16</sup>

In accordance with 40 C.F.R. § 122.62(a)(3), GSP Merrimack submitted a permit modification application to Region 1 on January 11, 2021, requesting that Merrimack Station's Permit be modified to incorporate certain portions of the 2020 ELG Rule applicable to FGDW and BATW, as well as to include a variance based on "fundamentally different factors" for BATW generated at the facility.<sup>17</sup> GSP Merrimack explained in the January 11 application that it was "not at this time selecting its compliance path for Merrimack Station."<sup>18</sup> Instead, the Company requested that an array of available compliance options be included in the modified permit because it "maximizes GSP Merrimack's flexibility while it continues to analyze the best path forward for Merrimack Station . . . [and] because it permits GSP Merrimack and Merrimack Station to utilize the automatic transfer provisions included in the 2020 Reconsideration Rule, should the need arise."<sup>19</sup> GSP Merrimack further provided that it would make its compliance selection "on or before October 13, 2021, in accordance with the construct of the 2020 Reconsideration Rule."<sup>20</sup> EPA Region 1 has not yet modified Merrimack Station's Permit to include provisions implementing the 2020 ELG Rule.

In accordance with this legal and factual history, GSP Merrimack submits this NOPP, pursuant to 40 C.F.R. § 423.19(e), to notify EPA Region 1 that Merrimack Station intends to comply with the subcategory for LUEGUs<sup>21</sup> with respect to both FGDW and BATW.<sup>22</sup> Although

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and subsequently remanded by EPA's Environmental Appeals Board (EAB) for the agency to carry out additional public notice and comment on the 40 percent capacity factor provision. *See In re Granite Shore Power Merrimack LLC*, 18 E.A.D. 524, 524-525 (EAB 2021), [https://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/Filings%20By%20Appeal%20Number/CB6DAB631E28A9A4852587260066B9C0?OpenDocument](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Filings%20By%20Appeal%20Number/CB6DAB631E28A9A4852587260066B9C0?OpenDocument).

<sup>15</sup> See 85 Fed. Reg. at 64,650 ("This final rule is effective on December 14, 2020.").

<sup>16</sup> NPDES Permit No. NH0001465 at Part I.A.19 (p.21 of 30).

<sup>17</sup> See Letter from Elizabeth Tillotson, GSP Merrimack, to Damien Houlihan, EPA Region 1, *Request for NPDES Permit Modification for Merrimack Station (NPDES Permit No. NH0001465) to Incorporate 2020 Steam Electric Reconsideration Rule* (Jan. 11, 2021) (hereinafter "Modification Request").

<sup>18</sup> *Id.* at 7.

<sup>19</sup> *Id.* at 7-8.

<sup>20</sup> *Id.* at 7.

<sup>21</sup> See 40 C.F.R. § 423.19(e)(1) ("For sources seeking to qualify as a low utilization electric generating units, a Notice of Planned Participation shall be submitted to the permitting authority or control authority no later than October 13, 2021.").

<sup>22</sup> See *id.* §§ 423.13(g)(2)(iii) (FGDW), 423.13(k)(2)(iii) (BATW).

this NOPP is currently selecting the LUEGU subcategory as the compliance path for Merrimack Station, GSP Merrimack further requests that Region 1 modify the Permit to also include conditions and limitations corresponding to each of the other compliance options requested in the Company's January 11, 2021 correspondence<sup>23</sup> pursuant to 40 C.F.R. § 423.13(o), which authorizes GSP Merrimack to automatically transfer between any of the applicable limitations prior to certain deadlines in the 2020 ELG Rule.<sup>24</sup> GSP Merrimack also requests that the Region include in the permit all of the permit conditions set forth in 40 C.F.R. § 423.18.

### III. NOPP for the “Low Utilization Electric Generating Unit” Subcategory for FGDW and BATW

The 2020 ELG Rule specifies that a NOPP for the LUEGU subcategory must be submitted to the relevant permitting authority by “no later than October 13, 2021”<sup>25</sup> and must:

- (1) “[I]dentify the potential low utilization electric generating unit[(s)]”;
- (2) “[I]nclude a statement of at least two years’ capacity utilization rating data for the most recent two years of operation of each low utilization electric generating unit”;  
and
- (3) Include “a statement that the facility has a good faith belief that each low utilization electric generating unit will continue to operate at the required capacity utilization rating.”<sup>26</sup>

An initial certification statement “based on the information submitted to the Energy Information Administration [(“EIA”)]” that “include[s] copies of the underlying forms submitted to the [EIA], as well as any supplemental information and calculations used to determine the two year

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<sup>23</sup> See Modification Request at 5-8. As one such option, GSP Merrimack has requested the generally applicable BATW effluent limitations with an “as soon as possible” date of December 31, 2025. See *id.* at 7. EPA stated in the 2020 ELG Rule that permit writers can properly consider filed NOPPs in the “other factors” prong of the “as soon as possible” definition. See 85 Fed. Reg. at 64,708. This NOPP therefore provides additional support for the requested December 31, 2025 date for compliance with the Rule’s generally applicable effluent limitations. This compliance date is also appropriate because it provides GSP Merrimack maximum flexibility to automatically transfer unencumbered to/from the various compliance options prior to the deadlines established in 40 C.F.R. §§ 423.13(o)(1).

EPA’s August 3, 2021 Notice of Rulemaking Initiative is an additional “other factor” that supports the requested date for compliance with the generally applicable effluent limitations. See 86 Fed. Reg. at 41,801. GSP Merrimack should not be required to install (or take meaningful steps to install) costly treatment technologies until there is certainty for the industry regarding what technology will ultimately be necessary to comply.

<sup>24</sup> See 40 C.F.R. §§ 423.13(o), 423.19(i).

<sup>25</sup> *Id.* § 423.19(e)(1).

<sup>26</sup> *Id.* § 423.19(e)(2).

average annual capacity utilization rating” for the applicable unit(s) is not required to be submitted until December 31, 2023.<sup>27</sup>

GSP Merrimack provides information to address the three requirements set out above in the remaining subsections of this correspondence. GSP Merrimack will provide the initial certification statement no later than December 31, 2023, in accordance with the 2020 ELG Rule.<sup>28</sup>

**a. Identification of Low Utilization Electric Generating Units (Requirement (1))**

Merrimack Station Units 1 and 2.

**b. Statement of at least Two Years’ Capacity Utilization Rating Data for the Most Recent Two Year of Operation for Each Unit (Requirement (2))**

The two-year average annual capacity utilization rating for Merrimack Station Unit 1 was 5.1 percent for 2019 and 2020. The two-year average annual capacity utilization rating for Merrimack Station Unit 2 was 5.4 percent for 2019 and 2020. These calculations utilize data from Forms EIA-860 (nameplate capacity) and EIA-923 (generation) data reports.<sup>29</sup> Set out below are the data and calculations used to determine the two-year average annual capacity utilization ratings for Merrimack Station Units 1 and 2.

	<b>Total MWH production</b>	<b>Y2019</b>	<b>Y2020</b>	<b>2019 &amp; 2020</b>
MK1	MWH	65,697	36,226	101,923
MK2	MWH	235,588	91,557	327,145
	<b>Hours per year</b>	<b>8760</b>	<b>8784</b>	
MK1	x nameplate capacity (113.6)	995,136.0	997,862.4	1,992,998.4
MK2	x nameplate capacity (345.6)	3,027,456.0	3,035,750.4	6,063,206.4
	<b>Capacity Utilization rating - CUR</b>			
MK1	%	6.6%	3.6%	5.1%
MK2	%	7.8%	3.0%	5.4%

**c. Statement of Good Faith Belief that Each Unit will Continue to Operate at a Capacity Utilization Rating of Less Than 10 Percent (Requirement (3))**

GSP Merrimack has a good faith belief that the two-year average annual capacity utilization rating for Merrimack Station Units 1 and 2 will prospectively be less than 10 percent. For the last several years, the facility has operated as a “peaking plant” that generates electricity only during peak demand periods. This is primarily due to market factors, including the dominance of natural gas in the New England market.

<sup>27</sup> *Id.* § 423.19(e)(3)-(4).

<sup>28</sup> *Id.*

<sup>29</sup> These data reports are available on EIA’s website:  
<https://www.eia.gov/electricity/data/eia860/> (Form EIA-860) and  
<https://www.eia.gov/electricity/data/eia923/> (Form EIA-923).

These market factors are not expected to change in the foreseeable future, meaning it is reasonable to anticipate that Merrimack Station's operational profile in the coming years will be consistent with the facility's utilization in the recent past.

This submittal concludes with the customary NPDES certification statement, signed by a responsible corporate official of GSP Merrimack. This statement further attests to the Company's good faith belief that the Merrimack units will prospectively operate as LUEGUs, as explained herein.

#### IV. Conclusion

As set forth above, GSP Merrimack submits this NOPP to request that Merrimack Station's NPDES permit be modified to include conditions and limitations corresponding to the 2020 ELG Rule's compliance subcategory for LUEGUs for both FGDW and BATW.<sup>30</sup> GSP Merrimack further requests that EPA Region 1 modify Merrimack Station's NPDES permit to also include conditions and limitations corresponding to each of the other compliance options requested in the Company's January 11, 2021 correspondence<sup>31</sup> so that GSP Merrimack may automatically transfer between the applicable limitations as authorized by 40 C.F.R. § 423.13(o).<sup>32</sup> Lastly, GSP Merrimack requests that the Region include in the permit all of the permit conditions set forth in 40 C.F.R. § 423.18.

GSP Merrimack appreciates this opportunity to provide EPA Region 1 with information relevant to its modification of Merrimack Station's Permit. If EPA Region 1 requires any additional information, or if GSP Merrimack can assist in any other manner, please do not hesitate to contact us at your convenience.

Sincerely,



Elizabeth H. Tillotson,  
GSP Merrimack LLC

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<sup>30</sup> See 40 C.F.R. §§ 423.11(y) (defining "capacity utilization rating"), 423.11(z) (defining "low utilization electric generating unit"), 423.13(g)(2)(iii) (limits applicable to FGDW), 423.13(k)(2)(iii) (limits and permit conditions applicable to BATW), 423.19(e) (NOPP requirements).

<sup>31</sup> See Modification Request at 6-7.

<sup>32</sup> See 40 C.F.R. §§ 423.13(o), 423.19(i).

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.



Elizabeth H. Tillotson,  
Responsible Official, GSP Merrimack LLC

cc: Mark A. Stein, Senior Assistant Regional Counsel, Region 1 (stein.mark@epa.gov)  
Thomas G. DeLawrence, Attorney, Balch & Bingham LLP (tdelawrence@balch.com)

