Conservation Law Foundation

September 10, 2003

By Hand Delivery and Email

RPS Mailbox
Division of Energy Resources
70 Franklin Street, 7th Floor
Boston, MA 02110-1313

Commissioner David O'Connor
Division of Energy Resources
70 Franklin Street, 7th Floor
Boston, MA 02110-1313

Re: Draft Advisory Ruling In Regard to the Biomass Conversion of the Schiller Station Unit 4 – Portsmouth, NH, Public Service of New Hampshire (PSNH)

Dear Commissioner O'Connor:

The Conservation Law Foundation is pleased to offer these comments on the draft ruling issued by your office regarding the proposed Schiller Biomass project. As the first Advisory Ruling of this sort issued by your office under the RPS regulations we view this document as being of important precedential value and accordingly are raising a number of "big picture" issues that we feel should be addressed in this ruling, and future rulings, as well as specific concerns and issues about the Schiller project.

The draft Advisory Ruling appropriately focuses much of its attention to the question of air emissions from the project. We applaud DOER for its emphasis on furthering the statutory and regulatory requirement that only "low emission, advanced biomass" projects be eligible for RPS credit. This is indeed the key touchstone that must guide evaluation of this and all similar projects. Like the Massachusetts auto emissions regime[1] that has slashed emissions from cars over the last two decades, the statutory and regulatory biomass emissions mandate at issue here is intended to be "technology forcing" -- pushing for better and better emissions control technology, methods and processes over time. This fundamental purpose and mission of the statutory and regulatory mandate at issue here must be the first, last, and central point in this review.

An ancillary but interrelated concern is the significant environmental issues raised by co-firing with coal. The reasons for concern, if not alarm, about the effects of air emissions from coal fired generation have been well documented, one example of such documentation can be found in the recent rule making by the Massachusetts Department of Environmental Protection adopting 310 CMR 7.29, an

[1] See, Mass. Gen. Laws c. 111 § 142K and 310 CMR 7.40 implementing the California Low Emissions Vehicle program pursuant to 42 U.S.C. § 7507 (Section 177 of the Federal Clean Air Act).

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air pollution control regulation specifically addressing coal fired generation.[2] DOER appropriately slams the door on any scenario that would employ coal in an RPS eligible biomass generation unit on anything like a regular or routine basis by requiring that coal be utilized solely as a "contingency" fuel. CLF, however, has grave concerns over the manner in which DOER closes this door. Exactly what level of usage defines a "contingency" fuel? Will all coal (if any) used at the Unit be drawn from reserves of coal with lower levels of sulfur? What guarantees does DOER or the public have that the Unit will not operate primarily as a coal burner with co-firing of wood as a de facto "contingency" fuel. In short, the restrictions on coal burning at the Unit need to be rigorous and effective, if such co-firing is going to be allowed at all. We recognize, of course, that to some degree this concern can be addressed by emissions regulations that limit the discharge of the signature pollutants of coal combustion. However, we believe that this concern needs to be specifically regulated by putting a hard cap on the percentage of time that the Unit burns coal, either alone or in conjunction with biomass, if RPS eligibility for the Unit is going to be maintained.

On the specific questions around the levels of air emissions that the Unit can emit while maintaining RPS eligibility CLF is in conceptual agreement with DOER concerning the purpose of DOER's requirements – to drive forward the development and deployment of "low emissions advanced technology biomass." However, we have concerns about the manner in which DOER is approaching these issues in the Draft Advisory Ruling and the measures that the project proponent is being asked to undertake to address the air emissions from the project.

Our first concern flows from the lack of coordination between DOER and the air permitting agency (the New Hampshire Department of Environmental Services, "NH DES") and utility regulator (the New Hampshire Public Utilities Commission, "NH PUC") that will also play a role in regulating this project. Evidently, NH DES staff only received the Draft Advisory Ruling at some point during the last two weeks. It appears that that the Draft Ruling presents more specific emissions information about this project than had been presented to NH DES**. CLF strongly believes that a strong "united front" that brings together all government agencies overseeing this project is needed to ensure that the "low emissions, advanced biomass" technology standard is met. There is a real danger that a pre-determination that emissions levels contemplated in the application for Advisory Ruling are "consistent with the 'low emissions' criterion for RPS biomass generation units" will undermine the ability of NH DES and NH PUC to require stricter emissions limits.** Therefore, DOER should plainly state that its staff do not view the emissions numbers presented in the Draft Advisory Ruling as dispositive and will work cooperatively with NH DES and NH PUC (as well as Massachusetts DEP) to craft appropriate emissions limits for the Unit in order to reach RPS biomass eligibility.

Even more importantly, this pre-determination improperly ties the hands of DOER itself in the future. The Draft Ruling does not state that it has a fixed "shelf life" and it is easy to imagine that this project (like many energy projects) could be delayed for any number of reasons and that by the time the project is permitted (let alone built) that emissions technology could have progressed further requiring more stringent emissions numbers in the actual RPS eligibility certification for the project. **The Ruling**

[2] Mass. DEP, Bureau of Waste Prevention, Division of Policy and Evaluation, *Statement of Reasons and Response to Comments for 310 CMR 7.00 et seq.: 310 CMR 7.29 – Emission Standards for Power Plants*, April 2001, http://www.state.ma.us/dep/bwp/daqc/files/regs/finalrsn.doc and documents cited therein.

needs to be clarified to plainly state that the determination of whether the emissions levels from the project are "consistent with the 'low emissions' criterion for RPS biomass generation units" can, must, and should be made at the time of actual application for RPS eligibility certification, not at this time. Of course, that certification application will need to exhibit a much higher level of certainty regarding the emissions levels and what emissions control technology will be employed at the Unit.

CLF is also concerned that the enforcement scheme contemplated in the Draft Ruling would not ensure that appropriate emissions levels would be achieved and maintained by the Unit. We urge DOER to closely coordinate the development of a compliance mechanism with NH DES and NH PUC, ensuring that the proponent does not face duplicative or contradictory requirements and the public receives the highest level of assurance that the Unit is achieving all pollution control requirements. We urge DOER (and NH DES and NH PUC) to specifically require the use of Continuous Emissions Monitors ("CEM") at the Unit with regular reporting to the GIS Administrator and regulators regarding the performance of the Unit, specifically stating whether or not the Unit is achieving the required emissions levels. In this day and age, with electronic collection, tabulation, and transmission of such data the norm, such a requirement would present a minimal burden to the Unit owner. Use of CEM technology will allow for a "real-time" determination of whether the generation from the Unit is or is not RPS eligible.

In a related vein, **the Draft Ruling's conclusion that RPS eligibility should be suspended completely if the Unit exceeds prescribed emissions limits for 90 days is dangerously ambiguous.** Power plants, particularly coal-fired plants, are capable of regularly moving in and out of prescribed emissions limits. The Draft Advisory Ruling implies that suspension would be appropriate only if the Unit were completely out of compliance for a continuous period of 90 days. We urge DOER (once again working with NH DES and NH PUC to craft the most aggressive feasible emissions control scheme) to set forth a standard that suspends RPS eligibility based on percentage of operation over a much shorter period of time, perhaps requiring suspension if the Unit exceeds its prescribed limits for more than 50% of hours of operation over the course of a 30 day period. Additionally, suspension might be linked to degree of exceedance -- if the Unit is regularly (perhaps more than 25% of the time over a two week period) producing SO_2 emissions that are two or three times the levels required for RPS eligibility suspension of RPS eligibility would be appropriate. The bottom line is clear – any generating unit that is a consistent source of high levels of air pollution, regardless of its fuel, should not be eligible for RPS eligibility at any time.

CLF also notes our concern that DOER's review of "low emission biomass" projects has not begun to include emissions of CO_2, a pollutant regulated by both Massachusetts and New Hampshire.[3] Biomass generation, particularly in northern New England, has the potential to be an effective and positive manner of harnessing wood waste that would otherwise literally go up in smoke with no effort to harness the released energy or, more likely, would simply rot slowly releasing carbon into the atmosphere. Additionally, biomass facilities can be good customers for forest owners making laudable efforts to manage their lands in a sustainable manner. If the wood used in the Unit comes from these sources, particularly sustainably managed forests, a "net CO_2 emissions" calculation for the Unit would show extremely low emissions. As reducing CO_2 emissions from power production is an important goal of the RPS, not to mention larger policies of both the Massachusetts and New Hampshire

[3] See, 310 Code Mass. Regulations § 7.29 and N.H. Rev. Stat. Ann. § 125-O.

governments, the emissions requirements for biomass projects should include CO_2 emissions on a "net life cycle" basis.[4] The Final Advisory Ruling would be an excellent place for DOER to require that the proponent develop (in consultation with stakeholders including NH DES, NH PUC, MA DEP, the Society for the Protection of New Hampshire Forests, NHPIRG, CLF, etc….) guidelines for assessing such emissions that would be finalized prior to the actual RPS eligibility certification for the project. Prior attempts at formulating methodologies for doing such an analysis can provide an excellent starting point for such a process.[5]

Once again, thank you for the opportunity to offer these comments. By thoughtfully engaging the specific issues that arise as the RPS mandate is translated into reality DOER is performing an essential function extremely well with very limited resources. I hope our comments will help to further this work.

Sincerely,

Seth Kaplan
Senior Attorney, Director Clean Air and Climate Change Project

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[4] For an analysis of the "life cycle" CO2 emissions from biomass facilities see, CONEG Policy Research Center, Inc. Northeast Regional Biomass Program, Securing a Place for Biomass in the Northeast United States: A Review of Renewable Energy and Related Policies, March 31, 2003 http://www.coneg.org/programs/nrbp_final_report.pdf ,

[5] See e.g., "Benign Energy: The Environmental Implications of Renewables" International Energy Agency (out of print, available on-line at http://www.iea.org/pubs/studies/files/benign/index.htm) Appendix A: Methodology for Calculating Emissions & Assessment of Environmental Impacts http://www.iea.org/pubs/studies/files/benign/pubs/append3a.pdf, Margaret K. Mann and Pamela L. Spath. "Life cycle assessment fo a biomass gasification combined-cycle system." NREL/TP-430-23076. December 1997. http://www.eere.energy.gov/biopower/bplib/library/life_cycleall.pdf