

Secretary's Order No. 2009-A-0034

Re: APPLICATIONS OF INDIAN RIVER POWER LLC FOR PERMITS TO CONSTRUCT AIR POLLUTION CONTROL EQUIPMENT AT THE INDIAN RIVER GENERATING STATION, MILLSBORO, SUSSEX COUNTY

Date of Issuance: September 30, 2009

Effective Date: September 30, 2009

Under the authority granted the Secretary of the Department of Natural Resources and Environmental Control (Department) under *7 Del. C. §6003*, the following findings, reasons and conclusions are entered as an Order of the Secretary. This Order considers Indian River Power LLC's (Applicant) applications for permits to construct pollution control equipment in order to reduce the air emissions of nitrogen oxides (NO_x) and sulfur dioxide (SO₂) from Applicant's Indian River Generating Station (Facility) near Millsboro, Sussex County.

On August 12, 2009, the Department held a public hearing on the permit applications before the Department's assigned presiding Hearing Officer, Robert P. Haynes, who prepared a Hearing Officer's Report dated September 29, 2009 (Report), a copy of which is attached hereto. The Report reviewed the public comments and made certain recommendations, including that the Department's Division of Air and Waste Management (DAWM), by its Air Quality Management Section (AQMS), issue Applicant the air pollution control permits substantially in the form in Appendix A to the Report.

I adopt the Report and its recommendations and direct that AQMS issue Applicant the permits substantially as AQMS has recommended to the hearing officer. This regulatory action will allow Applicant to begin the construction of important air

pollution control equipment as soon as possible. I find and conclude that the construction permits are consistent with the Department's *Regulation 1146* and the Consent Order the resolved Applicant's appeal of *Regulation 1146*. In *Regulation 1146*, the Department established emissions limits on the Facility's air emissions of NO_x and SO₂. The regulatory basis for the limits was the recognition that the Facility's NO_x and SO₂ emissions, as hazardous air pollutants, pose a significant threat that impairs air quality, which in turn causes severe human health problems and harms the environment.

This Order will permit the construction of air pollution equipment on the Facility's units 3 and 4 by December 31, 2011. The Facility's oldest units, 1 and 2, are scheduled to be shutdown over the next two years pursuant to the Consent Order. Thus, this Order is the culmination of the Department's regulatory steps that will result in a dramatic reduction in the Facility's air emissions of NO_x and SO₂.

I find and conclude that the permits will provide significant environmental and public health benefits. The construction of the pollution control equipment will enable the Facility to reduce its air emissions of harmful pollutants and improve the air quality near the Facility and also for all of Delaware. The permits to be issued as a result of this Order will allow the construction of pollution control equipment that should reduce the Facility's NO_x emissions by 70% and reduce SO₂ emissions by approximately 85-90%. The Applicant last year received approval to install air pollution equipment to also reduce mercury emissions. Together the Applicant estimates that it will spend approximately \$500 million on pollution control equipment at the Facility. The Department's purpose is to protect the environment and public health. Nevertheless, the pollution control projects

that Applicant is undertaking in response to *Regulation 1146* and the Consent Order will provide tangible benefits to Delaware's economy.

I note that in the past many of the Applicant's permits have been the subject of vocal local opposition, but the Department's hearing resulted in no opposition to the permits. Indeed, the many participants supported Applicant's pollution control project. I find and conclude that the permits to be issued as a result of this Order are an important step to improving the air quality in Delaware, and particularly in Sussex County.

In sum, as more fully described in the reasons and findings above and in the Report, I adopt and direct the following as a final order of the Department:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department shall issue Applicant the permits requested, subject to reasonable conditions determined by DAWM as set forth in the draft permits, to allow the construction and operation of the pollution control equipment that should significantly reduce the air emissions of NO_x and SO₂ and allow Applicant to comply in a timely fashion with the Consent Order;

6. The Department shall issue the permits to Applicant as soon as possible to allow construction to commence to comply with the Consent Order's time limits; and

7. The Department shall provide notice of this action to those persons who requested to receive such notice and as otherwise the Department determines appropriate, and shall publish it on the Department's web page.

/S:/_____

Collin P. O'Mara
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire
Senior Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Applications of Indian River Power LLC for Air Pollution Control Permit
Amendments to Construct Air Pollution Control Equipment at the Indian
River Generating Station, Millsboro, Sussex County

DATE: September 29, 2009

I. PROCEDURAL HISTORY

This Report recommends action to the Secretary of the Department of Natural Resources and Environmental Control (DNREC or Department) on the permit applications,¹ dated April 16, 2009, which Indian River Power LLC (Applicant), a subsidiary of NRG Energy, Inc., submitted to the Department's Division of Air and Waste Management, Air Quality Management Section (AQMS). The Applicant seeks permission under *Regulation 1102* of the Department's *Regulations Governing the Control of Air Pollution, 7 DE Admin. Code 1102*, to construct pollution control equipment at Applicant's Indian River Generating Station, an electric generating power plant located at 29416 Power Plant Road, near Millsboro, Sussex County (Facility).

The Facility has four coal-fired steam generating units, which were impacted by the Department's December 2006 *Regulation 1146, 7 DE Admin. Code 1146*. *Regulation 1146* required the Facility to reduce air emissions of the hazardous air pollutants mercury,

¹ The application package is for Air Pollution Control (APC) permits or permit amendments to construct 5 lime storage silos with baghouse (APC-2009/0106), a byproduct storage silo with baghouse (APC 2009/0107), 90,000 gallon aqueous ammonia storage system for units 3 &4 (APC-2009/0105, selective catalytic reduction systems, circulating dry scrubber systems for units 3 &4 (APC-81/0660 Amendment 8 Unit 3 and APC-82/0149 Amendment 7 Unit 4 (APC-82/0149)

nitrogen oxides (NO_x) and sulfur dioxide (SO₂) within certain time period. The Applicant appealed *Regulation 1146*, but a 2007 negotiated settlement approved by the New Castle County Superior Court's issuance of a Consent Order in C.A. 07C-02-283FSS set a deadline of December 31, 2011 for revised NO_x and SO₂ limits. The Consent Order also requires the Applicant's shutdown of Units 1 and 2 by May 1, 2010 and May 1, 2011, respectively, which are the Facility's oldest units.

The Department determined that the public interest of Delaware would be best served by holding a public hearing on the application. Accordingly, on July 20, 2009, the Department published public notice of the application and that the Department would hold an August 12, 2009 public hearing in order to receive public comments. I was assigned to preside over the public hearing and to prepare a report of recommendations based upon a recommended record. In an August 14, 2009 memorandum, I requested the assistance of AQMS, which provided me with a September 17, 2009 Technical Response Memorandum (TRM) attached hereto as Appendix A.

II. SUMMARY OF THE RECOMMENDED RECORD

The public hearing record contains a sixty-two page verbatim transcript of the public hearing and the documents introduced in the record at the public hearing as exhibits. At the public hearing, AQMS's representatives Paul Foster, P.E. and Tom Lilly, P.E., provided the public hearing record with the following: Applicant's application package for Air Pollution Control permits and permit amendments (DNREC Ex 1), Applicant's May 18, 2009 letter requesting that the six bin vent filter associated with the storage silos be determined to be an inherent part of the process (DNREC Ex. 2), the public legal notices and Department letters to the Applicant and others notifying them of

the public hearings. (DNREC Ex 3 and 4).² The Applicant made a brief presentation from the Facility's Plant Manager, John Robertson, and I recommend that it be included in the record as Applicant Ex 1.

There were no public comments opposing the permit application, but John Austin wrote the Department emails that were answered and I recommend that they be included as part of the record as DNREC Ex 5. Mr. Austin also spoke at the hearing, and the Department representatives answered his questions completely at the hearing, and resulted in the permits' 'potential to emit' reflecting the levels consistent with *Regulation 1146*, as noted in the TRM. The remaining oral public comments for the other 18 speakers, including State Senator Bunting, State Representative Atkins and Mayor Gum of Millsboro, were in support of the permit applications based upon improving the air quality and providing employment during the construction of the estimated \$500 million construction project for all pollution reduction projects. There was a comment on air monitoring and the Applicant's Plant Manager, John Robertson, indicated that the Applicant was working with the Department on an acceptable program to improve the existing Department air monitoring. The Department's TRM indicates that the process of enhancing air monitoring will continue outside of these permits so as to not delay the construction of the pollution control equipment.

The Application and the TRM set forth that the pollution control equipment to be installed would result in the Facility achieving the emission reductions required to comply with *Regulation 1146* and the Consent Order. The Applicant claims the

² The Department does not have any legal obligation to develop the public hearing record and remains neutral on the merits of a pending *Regulation 1102* permit application until after the public hearing. Nevertheless, the Department develops a basic public hearing record for the public's benefit in presenting comments.

equipment should result in a 70% reduction in NO_x emissions and an 85-90% reduction in SO₂ emissions. The Applicant has selected the pollution control equipment to meet the emission reductions necessary to comply with *Regulation 1146*. The application package executive summary provides an excellent overview of the equipment and the proposed process. The TRM indicates that the equipment should be installed as proposed subject to the permit conditions.

As noted above, AQMS provided a TRM and included a proposed permit. Based upon my review I recommend that the TRM and the record identified above be adopted if the Department issues a final decision consistent with the recommendations in this Report.

III. RECOMMENDED FINDINGS AND REASONS

The requested construction permits are the result of a long and controversial regulatory process. The proposed permit applications, however, have not been controversial, but instead are supported and welcomed by the community. I find that the Applicant's application package is complete and that the recommended record supports issuance of the requested construction permits to the Applicant substantially in the form as the proposed permit attached to the TRM. I recommend approval of DAWM's issuance of air pollution control permits in the form set forth in the TRM because it will result in substantial reductions in the Facility's air emissions of NO_x and SO₂.

The Department's experts in AQMS have independently and thoroughly reviewed the applications and prepared proposed permits that reflect reasonable permit conditions. They also do not recommend any permit conditions for air monitoring, and I agree that this change would unduly delay the permits. It is important not to delay the construction

of pollution control equipment, which was in operation after December 31, 2010 will substantially reduce the air emission of harmful pollutants NO_x and SO₂, which will improve air quality in Sussex County and throughout Delaware. I agree that monitoring air quality near the Facility is important and should be implemented in the future, but that it is more important for this package of permits to approve the installation of the equipment that will actually reduce air emissions than to delay the construction in order to install equipment to monitor air emissions as part of this permit package.

I find the proposed conditions to the permits, as prepared by the Department's technical experts, are reasonable and appropriate to ensure that the environment and public health will be protected from any undue risk of harm and to allow the Department to exercise the appropriate level of ongoing monitoring and regulatory oversight over the Facility. As with any permit, the Department has its enforcement authority to exercise when needed to require compliance with the permit. I also recommend that the Department satisfy the Applicant's request for the regulatory treatment of bin vent filters, as requested in its letter set forth in DNREC Ex. 2.

IV. RECOMMENDED FINDINGS AND CONCLUSIONS

Based on the recommended record developed, I find and conclude that there is sufficient support to approve issuance of the air pollution control permit amendment to allow the construction and operation of the air pollution control equipment as described in the application. I recommend the Secretary adopt the following findings and conclusions:

6. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;

7. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;

8. The Department held a public hearing in a manner required by the law and regulations;

9. The Department considered all timely and relevant public comments in making its determination;

10. The Department shall issue Applicant the permits substantially as set forth in the attachment to the TRM, including the reasonable conditions appropriate to protect the environment and public health from undue risk of harm, in order to allow the construction of the pollution control equipment that should significantly reduce the air emissions of pollutants;

6. The Department shall issue the Air Pollution Control permits to Applicant as soon as possible to allow construction to commence to comply with the Consent Order's time limits; and

7. The Department shall provide notice of this action by mail or email on each person who requested to receive such notice, and as otherwise determined by the Department.

/s/_____

Robert P. Haynes, Esquire