



STATE OF DELAWARE  
**PUBLIC SERVICE COMMISSION**

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Ali Mirzakhali, P.E.  
Administrator, Air Quality Management  
156 South State Street  
SLC: D215  
Dover, DE 19901

VIA Facsimile and State Mail

Dear Mr. Mirzakhali:

The Delaware Public Service Commission Staff (PSC Staff) appreciates the opportunity to continue to comment on DNREC's effort to develop an air-quality regulation for distributed and emergency generation in Delaware. While perhaps not the largest source of environmental emissions, many of these units are recognized contributors to air pollution in Delaware, especially considering their proclivity to be utilized during peak periods, when pollution effects may be at their greatest. The PSC Staff offers these comments only to provide DNREC with Staff's input as it relates to economic and reliability impacts of the proposed regulation, which the Department can use to determine if any modifications to the proposed regulation would be necessary.

Staff appreciates the discussion we had following the filing of our previously drafted comments on Proposed Regulation No. 44. The discussion was very useful and alleviated some of our initial concerns with the proposed regulation. We agree that the proposed Regulation No. 44 (Draft 3) provides the opportunity for existing distributed generators on commercial poultry producing premises to continue operating their generators provided they are either participating, or signed up to participate, in a Department approved emission control strategy cost-share program (Section 3.2.1.2.1). This alleviates much of our concern with respect to small rural generators, except that it is still our understanding that there may be other non-poultry generators that would not qualify under the proposal as it now stands. These generators have historically engaged in peak shaving efforts to support the reliability of the electric system and to reduce energy costs. As we understand it, there would still be the potential for significant retrofit costs for the owners of these generators. The possible reduction in the number of generation units, due to costly retrofits, may also result in higher costs for generation owners and Delaware electric consumers. This is due to the lack of redundancy of the electric system on the Delmarva Peninsula. Electric distribution companies have come to rely on the use of these generators to help ensure reliability and reduce the need to run more expensive generators during peak periods.

With regard to our comments concerning the pre-scheduling of generator operational testing, we believe that your proposal to modify Section 4 to include an exception for hospital units required to meet National Fire Protection Association (NFPA) and Joint Commission on Accreditation of Healthcare Organizations (JCAHO) standards resolves that issue. We understand that under the proposed modification, hospital emergency generators may be tested on any day when such testing is required to meet the NFPA or JCAHO requirements, thus minimizing the economic impact on hospitals.

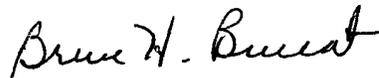
Another area of concern that we submit for your consideration is that the current version of the proposed regulation appears to be more far reaching than originally intended. In November 2003, DNREC proposed developing an air quality regulation along the lines of the Regulatory Assistance Project (RAP) Model Rule, applicable to smaller scale Distributed Generation (DG) (5kw to 7MW range). As the regulation evolved, it has moved from applying only to smaller scale DG to applying to all stationary generators. The scope of the regulation now includes central station units that are used by municipalities and member/investor owned utilities for black start, peak shaving and general system reliability. Most recently, Staff had the opportunity to meet with several Delaware power producers, who expressed both reliability and cost concerns related to their generation units. It is our understanding that these units, totaling approximately 150 Megawatts, are currently subject to Reasonably Available Control Technology (RACT) as defined in NOx Regulation No. 12 and the imposition of this new regulation will apparently override or supplement that requirement. The PSC Staff is concerned that application of Regulation No. 44 to all stationary generation units may likely result in the early retirement of some of these units, because of the high expense of retrofitting to meet the proposed standards. If retirements were to occur this would cause some degradation of system electric reliability, particularly during times of peak load when all system resources are required to help support system voltage and frequency. On the Peninsula, where transmission constraints occur frequently, this may also result in significant increased energy costs to compensate for the loss of these units during high load periods. This development deserves further consideration.

As a related concern, Staff notes that the regulation requires stationary generators to declare their units as either an emergency generator or a distributed generator. In limiting that choice, the regulation does not recognize the larger size class of generator used for wholesale power supply, system reliability and black start capability. Consequently, these larger units would be forced to run on the significantly reduced schedule of an emergency generator if not retrofitted. PSC Staff does not question any of the air-quality benefits of this regulation. We raise this issue for DNREC's consideration over the concern that the owners could decide that retrofitting these units is not in their best interests and decide to retire them raising all of the economic and reliability issues previously mentioned.

As discussed in our earlier comments, Staff suggests that DNREC consider the possibility of either grandfathering these larger scale existing generators, so they are not subject to the regulation when it is implemented, or expanding the definition of emergency to include a generator's ability to respond to high-energy demands, with perhaps a run-hour limitation. As you may remember, Staff had initial concerns around the definition of emergency, recognizing that there may be system conditions such as high energy demand periods or system voltage disturbances that may require the use of the existing generation to prevent reliability issues and high spikes in energy costs.

Staff sincerely appreciates the opportunity to provide further comment on this draft regulation. We are pleased that several of our initial concerns have been addressed as we have moved from a general discussion to the final draft of the regulation. The PSC Staff commends DNREC's efforts to help reduce generator emissions. Such efforts are meant to improve the quality of life for all Delawareans. In this regard, we ask DNREC to continue to consider the potential reliability and economic impacts of the proposed regulation. To that end, Staff suggests that it may be beneficial to meet at least one more time before the regulation is published as a proposed rulemaking. We would also recommend that the appropriate representatives from PJM be invited to these meetings to provide input on the potential reliability impacts and economic cost of the regulation. Again, thank you for the opportunity to comment on this process.

Sincerely,



Bruce H. Burcat  
Executive Director  
Delaware Public Service Commission

cc: Mark A. Prettyman  
Environmental Scientist  
Delaware DNREC-AQM