

September 22, 2008

Ms. Valerie Gray, Planning Supervisor  
Air Quality Management Section  
Delaware Department of Natural Resources  
& Environmental Control  
156 South State Street  
Dover, DE 19901



**Re: Comments on Proposed Regulation No. 1147  
Carbon Dioxide Budget Trading Program**

Dear Ms. Gray,

Conectiv Delmarva Generation (Conectiv or the Company) is pleased to provide the following comments and suggestions to the Department of Natural Resources & Environmental Control (DNREC or the Department) regarding Delaware's September 1, 2008 proposal to implement the Regional Greenhouse Gas Initiative (RGGI) Carbon Dioxide (CO<sub>2</sub>) Budget Trading Program, proposed as Regulation No. 1147 of Delaware's Regulations Governing the Control of Air Pollution. Conectiv is a competitive energy supplier based in Newark, Delaware, with electric generating facilities in the mid-Atlantic region. The Company owns and operates three electric generating facilities in Delaware that will be affected by proposed Regulation No. 1147.

Conectiv recognizes the growing scientific and public concern regarding the climate change issue. The Company continues to support federal legislation in order to address this matter of national and international concern. Conectiv commends the Delaware Legislature for addressing this issue and encourages DNREC to include the necessary provisions in the proposed Regulation for addressing the transition from a regional program to a federal program, which we anticipate will become reality in the near future.

As a member of the Northeast Regional Greenhouse Gas Coalition (GHG Coalition), Conectiv supports the comments and recommendations that this organization has recently submitted to the Department. In addition, Conectiv provides the following comments

regarding various aspects of proposed Regulation No. 1147. A summary of these comments are as follows:

- Combined Allocation/Auction. Conectiv supports the DNREC's proposal of a phased-in combination of an allocation/auction program. This effort promotes a reasonable allowance allocation methodology coupled with a robust offset market. These elements, particularly at the outset of a new cap and trade regulatory program, will minimize CO<sub>2</sub> allowance price volatility and will minimize potential financial impacts on the economy.
- Emissions leakage represents a major obstacle to achieving meaningful environmental results through RGGI, especially for states that have RGGI affected sources that operate in the PJM interconnection. Absent a federal cap and trade program, the proposed transition to 100% auction program will also help minimize the potential affects of leakage in Delaware.
- The monitoring, recordkeeping, and reporting requirements as presented in the proposed rule will unduly burden regulated sources. Conectiv requests simple revisions to provide more flexible monitoring, recordkeeping, and reporting requirements in order to better reflect current practice in existing cap and trade programs.
- Lastly, Conectiv believes that reductions resulting from state-issued administrative consent orders, and other voluntary agreements or voluntary shutdowns, should be eligible for CO<sub>2</sub> offsets or early reduction allowances.

### **1. Combined Allocation/Auction**

Proposed Regulation No. 1147 proposes a 60% allowance auction and a 40% direct allowance allocation to CO<sub>2</sub> budget sources for the calendar year 2009. The auction quantity would increase by 8% annually resulting in 100% auction of allowances beginning in 2014. Delaware is unique in offering this approach among other states.

Conectiv commends DNREC for implementing a phased-in approach in the proposed CO<sub>2</sub> Budget Trading Program Regulation. Adoption of such a transitional program should minimize the likelihood of emissions leakage and market manipulation. Conectiv appreciates several advantages the phased-in auction approach offers including:

- Increasing the probability that CO<sub>2</sub> allowance prices will be moderate, while not adversely affecting the regional electricity markets;
- Providing a transitional path to implement allowance auctions into this newly formed cap and trade program;

- Providing greater business planning certainty and reduced financial impact to sources; and
- Reducing the potential increase in electricity imports into the RGGI region.

## **2. Emission Leakage**

The RGGI program may reduce emissions of CO<sub>2</sub> from electric generators in the RGGI region; however, an increase in electricity imports is likely due to an increase in operating costs to RGGI generators. A study conducted by Maryland<sup>1</sup> indicates that power flows from the “outside in” for the RGGI region. In fact, six (6) of the RGGI states, including Delaware, Connecticut, New Jersey, Maryland, Massachusetts, and New York are net importers of power. Overall, Conectiv believes the implementation of RGGI will increase the flow of electricity from outside the RGGI region into RGGI states. This will likely increase the CO<sub>2</sub> emissions of neighboring states. The increased import of electricity will occur as a result of 1) the early retirement of generation within RGGI states, 2) the shift in market dispatch in the PJM wholesale electricity markets as a result of CO<sub>2</sub> allowance price adders, which at times would displace lower emission RGGI located generators (i.e. natural gas- and oil-fired) with higher emission non-RGGI located generators (i.e. coal-fired), and 3) the reduced investment in new electric generation within the RGGI region. For example, Pennsylvania, a non-RGGI state, has additional coal-fired generation facilities under construction and is likely to increase its overall power supply capabilities. Therefore, the anticipated CO<sub>2</sub> reduction efforts brought about by the RGGI program may be lost due to increases in emissions associated with electricity imports from outside the RGGI region.

Again, Conectiv supports a national program that will replace RGGI and ensure that an overall reduction of greenhouse gas emissions in the United States is truly achieved. This would also ensure that all power generators operate on a common, level playing field. Conectiv commends DNREC’s proposal, absent a federal cap and trade program, to transition to a 100% auction program to help minimize the potential affects of leakage in Delaware at the outset of the allocation/auction program. Conectiv also commends DNREC for working with PJM to monitor potential emissions leakage from non-program affected generation facilities in the wholesale electricity markets that are serving electricity load in Delaware. Monitoring information through the Generator Attribute Tracking System (GATS) of PJM will not address emission leakage. Rather, it will simply document its existence.

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<sup>1</sup> Center for Integrative Environmental Research, University of Maryland, College Park, Economic and Energy Impacts from Maryland’s Potential Participation in the Regional Greenhouse Gas Initiative, January 2007.

### **3. Monitoring, Recordkeeping, and Reporting**

The monitoring, recordkeeping, and reporting requirements proposed in the draft Delaware regulation address continuous and annual requirements for the CO<sub>2</sub> budget units. Conectiv has a number of electric generating facilities, including three in Delaware, that will become subject to the monitoring, recordkeeping, and reporting provisions. This new regulatory burden is expected to be resource intensive. Conectiv provides the following comments and suggestions regarding the proposed monitoring, recordkeeping, and reporting requirements:

**Monitoring** Conectiv supports DNREC's proposed Section 8.1.3.3.1 that allows CO<sub>2</sub> budget units subject to an Acid Rain emissions limitation (Regulation No. 1136) or the NO<sub>x</sub> Budget Trading Program (Regulation No.1139) that qualify for the optional SO<sub>2</sub>, and CO<sub>2</sub> (for acid rain) or NO<sub>x</sub> (for NO<sub>x</sub> Budget) emissions calculations for low mass emissions (LME) units under 40 CFR 75.19, to utilize the CO<sub>2</sub> emissions calculations for LME units under 40 CFR 75.19 for the purposes of compliance with proposed Regulation No. 1147. Conectiv also supports DNREC's proposed Section 8.6.2.2 that allows sources to submit petitions to DNREC requesting approval of alternative monitoring procedures for purposes of demonstrating compliance with proposed Regulation No. 1147.

**Recordkeeping** The recordkeeping requirements associated with the CO<sub>2</sub> Budget Trading Program requires sources to retain data used to monitor, determine, or calculate net electric output and net thermal output for a period of ten years, as stated in 7 DE Admin. Code 1147.8.8.6.2. This ten year time period is extensive and unprecedented as other Clean Air Act programs have either required a three year or five year time period for record retention. The Title IV Part 75 Acid Rain Program for the SO<sub>2</sub> and NO<sub>x</sub> trading programs only require a record retention period of three years. The Title V Part 70 Operating Permit Program requires facilities to maintain monitoring data and supporting information for a period of five years.

Conectiv agrees that, due to the fact that the CO<sub>2</sub> Budget Trading Program has a control period of three calendar years, a longer record retention is warranted. Therefore, Conectiv recommends that the Department consider a six year [two control periods] record retention requirement as being sufficient to ensure compliance with the CO<sub>2</sub> Budget Trading Program Regulation.

**Reporting** The proposed rule contains provisions for affected sources to submit a monitoring plan and to report the following parameters on an annual basis

- Net electrical output;
- Net thermal output.

Conectiv believes that reporting these parameters is duplicative given that they are currently reported and recorded in the GATS. Conectiv believes that DNREC should work closely with GATS and other existing information systems as appropriate in order

to obtain the above data, rather than require power generators to report the information twice.

Conectiv believes that it is unnecessary and duplicative to require power generators to report the above listed parameters on an annual basis (by March 1 for the immediate preceding calendar year) in both electronic and hardcopy form. Again, the CO<sub>2</sub> budget sources are highly regulated sources, almost all of which are also required to participate in the Title IV Part 75 Acid Rain Program. The Acid Rain Program has an annual March 1 reporting deadline. Many state agencies also have programs to report their annual emission inventories by March 1. Conectiv feels that an April 1 reporting deadline makes more sense to allow for adequate quality assurance and certification of the reported data. The April 1 deadline allows ample time for Administrator oversight as the control period is three calendar years.

The requirement to submit the annual reports in both electronic and hardcopy format is duplicative and inefficient. The well established, highly effective Title IV Part 75 Acid Rain Program allows for electronic submittal only, provided that a paper copy can be furnished upon request to the Agency. Conectiv suggests DNREC revise the language in the proposed model rule Section 8.8.6.3 to the following to address both the accepted format and submittal date of the annual report:

*“The data must be sent electronically, provided a paper copy can be furnished upon request, by April 1 for the immediately preceding calendar year to the Department or its agent.”*

#### **4. CO<sub>2</sub> Offset and Early Reduction Allowances**

DNREC has offered unique provisions in Section 10.3.1.2.1.1 that qualify offset projects as eligible to receive CO<sub>2</sub> offset allowances for projects located partly in the State of Delaware and partly in one or more other participating states, provided that the larger part of the CO<sub>2</sub> equivalent emissions reduction or carbon sequestration due to the offset project is projected to occur in the State of Delaware. In light of Delaware's size, Conectiv supports and appreciates DNREC's decision to include projects partly located in other states as eligible offset projects.

DNREC's proposed CO<sub>2</sub> Budget Trading Program Regulation states in Section 10.3.4.1 that “CO<sub>2</sub> offset allowances shall not be awarded to an offset project or CO<sub>2</sub> emissions credit retirement that is required pursuant to any local, state, or federal law, regulation, or administrative or judicial order.” Conectiv believes that this exclusion should not apply in the case of administrative consent orders (ACOs) or other voluntary agreements that may be entered into by sources. Reductions agreed upon in an ACO are often voluntary; a generator or facility should not be penalized and should be able receive any emission offset allowances generated as a result of an ACO or other voluntary agreement.

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Therefore, Conectiv suggests the removal of "*administrative*" from DNREC Title 7 Part 1147 Section 10.3.4.1 proposed language.

Thank you for giving Conectiv this opportunity to provide comments on Delaware's proposed CO<sub>2</sub> Budget Trading Program, Regulation No. 1147. Should you or your associates have any comments regarding the above matters, please feel free to contact me at (302) 451-5319. Please incorporate these comments into the public hearing record associated with the proposed Regulation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stuart Widom".

Stuart Widom  
Sr. Environmental Consultant