



Indian River Operations Inc.
P.O. Box 408
Power Plant Road
Millsboro, Delaware 19966

An NRG Energy Company

August 29, 2005

Mr. Mark Prettyman
Air Quality Management Section
Department of Natural Resources
and Environmental Control
156 South State Street
Dover, Delaware 19901

**RE: Proposed Regulation 1144 (originally Regulation 44)
Regulation of Stationary Generation Emissions**

Mr. Prettyman

NRG Energy, Inc. appreciates this opportunity to comment on the Department of Natural Resources and Environmental Control, Air Quality Management Section's ("DNREC" or "the Department") proposed Regulation 1144, Regulation of Stationary Generation Emissions. Following are comments addressing specific regulation sections addressing the purpose, intent, and implementation of this proposed regulation. These comments are in addition to our comments filed December 28, 2005 on this regulation, originally defined as Regulation 44.

Section 1.3.2.2

The proposed regulation requires existing sources to comply with new emission standards by April 1, 2007. If the regulation were finalized and implemented by October 1, 2005, this would only permit eighteen months for a source to define a compliance plan, establish funding, procurement, and construction. We believe this timeline is not achievable to evaluate and retrofit existing sources or replace them and that a specific compliance date should be not defined at this time. As an alternative, we suggest the compliance target be defined as "twenty-four months from the regulations effective date". This will allow sources adequate time to meet these standards and is consistent with the language and approach the Department has taken on other registration and compliance timelines. For larger or more complex retrofits, we suggest the compliance timeline be a minimum of thirty-six months.

Section 3.2.1.1

The proposed regulation includes limitations for NO_x, SO₂, PM, CO, and CO₂. We are aware of the Departments concern for improving air quality and addressing NAAQS for fine particulate and for 8-Hour Ozone. For this reason, implementing limitations of NO_x,

Mr. Mark Prettyman
August 29, 2005
Page 2

SO₂, and PM are reasonable. However, we do not believe limitations of CO₂ are justified or feasible for retrofitting control technology on existing sources. We request these emissions limitations be removed. First, retrofit technology for reducing CO₂ emissions does not exist. Second, the Department's authority to regulate emissions of CO₂ as a "regulated pollutant" is in question under the provisions of Clean Air Act (CAA) and its intent; which is "to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and productive capacity of its population". Because CO₂ is not a federally regulated pollutant and lacks defined NAAQS, we are in agreement with EPA's determination that the agency lacks authority to regulate CO₂ for purposes of addressing global climate change and EPA's findings on the uncertainties of CO₂'s impacts on public health and the environment. The same determination should apply on a state basis. Therefore, in the absence of a legislative directive, the state should first justify its authority under the Delaware Code to regulate a global concern where EPA and the CAA lack such authority.

Thank you for considering these comments. If you have any questions or wish to further discuss these comments, I can be reached on (302) 540-0327.

Very truly yours,

David Bacher
Regional Manager
NRG Environmental Business

CC: G. Hopper
R. Amirikian (DNREC)