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*An NRG Energy Company*

December 28, 2004

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

**RE: Proposed Regulation 44  
Regulation of Stationary Generation Emissions**

Mr. Mirzakhilili,

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 44, Regulation of Stationary Generation Emissions. Following are comments addressing specific regulation sections as well as general comments addressing the purpose, intent, and implementation of this proposed regulation.

**Section 1.2.1**

Subsection 1.2.1.1, includes source exemption criteria based on meeting BACT or LAER. For existing controlled sources, we believe this exemption is reasonable however for existing uncontrolled sources, exemption criteria should be based on existing regulatory criteria which allows the provisions of RACT to apply. Specifically, for small sources that do not meet the definition of an emergency generation source and that have a low capacity factory (suggest less than 25%) should be applicable to a RACT determination within this regulation.

**Section 1.4.2**

The proposed regulation requires sources to satisfy information requests within 3 months of the regulations effective date. To assure all applicable sources are aware of this regulation and have knowledge of the effective date, we suggest that a letter of notification be issued to each existing source and that the Department provide an information request form.

**Section 1.4.2.2**

The proposed regulation requires compliance within 12 months of the effective date. We believe this timeline is not achievable to evaluate and retrofit existing sources or replace them. We request the department consider traditional emissions reduction timelines allowing at a minimum, 3 years for compliance.

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### **Section 3.2.1.1**

Section 3.2.2.1 provides applicability criteria for new sources. Section 3.2.1.1 does not provide applicability criteria for existing sources. This is not consistent. We request existing sources be provided an applicability criteria (in addition to a RACT exemption) that this regulation apply to only sources less than 15 MW.

In the event an applicability criteria is not be provided for existing sources; since this is a multi pollutant regulation, an exemption criteria should be applied and consistent with current EPA applicability guidelines and not Delaware's NOx Budget applicability criteria. Therefore, applicability for existing sources should be based on a prime power rating of 25MW or greater.

### **Section 3.2.1.1**

The proposed regulation includes limitations for NOx, 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 NOx, SO2, and PM are reasonable. However, we do not believe limitations of CO or CO2 are justified or feasible for retrofitting control technology on existing sources. We request these emissions limitations be removed.

### **General Applicability Comments**

Overall, NRG supports the concept of developing distributive generation limitations to assure improved air quality in Delaware. However, we do not believe these regulations as proposed; reflect the intentions of the Governor's Energy Task Force (Task Force), or the desire to control true distributive generation sources. The intent of the Task Force was to encourage small distributive generation (DG) for the States next increment of generation resources near load centers. In association with this objective, it was recommended stringent emissions limitations be applied to "new" sources, primarily diesel generation, if they are added to the regional energy supply network. However, the Department has chosen to expand this regulatory initiative (intended to limit emissions of new DG sources); by expanding the definition to include existing sources and expanding the applicability to include all combustion turbine and/or generator sources. We request the regulation be limited to new sources, and those that meet the true definition of distributive generation such as sources.

In addition, we request the Department recognize energy infrastructure limitations in Kent and Sussex County and recognize emissions contributions from these counties in association of NAAQS when applying regulations and establishing exemptions. For example, Kent and Sussex County do not exceed fine particulate standards and therefore, there is no justification to implement more stringent regulations of SO2 or PM emissions on existing sources in these counties.

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As noted in our comments of Section 3.2.1.1, NO<sub>x</sub> requirements should be subject to RACT (thus exempt) and CO<sub>2</sub> limitations are not justified (and there are no applicable technologies available for existing sources who can not meet these limitations). For this reason, these regulations should not apply to existing sources in Kent or Sussex County.

In regard to infrastructure, there are two concerns; transmission access and natural gas availability. Currently, there are no fuel alternatives such as natural gas south of Dover and transmission access is constrained. Therefore, there is a need for additional generation resources such as oil fired combustion turbines. These existing energy sources (meet the proposed applicability requirements) are needed to support system requirements during extreme peak conditions to provide; peak energy, line stability, or replace unavailable capacity. Because there are no fuel alternatives available such as natural gas and the feasibility of applying retrofit controls is very limited, it is probable the result of these regulations will force these many of these needed resources out of service.

**Summary**

We recognize the Department has made an attempt to establish achievable limitations for existing sources, and where that is not feasible, has included exemptions to address these needs as they are discovered. Our comments are intended to work within this regulation and contribute to the development of a quality regulation. However, we believe, to meet the intentions of the Task Force, address the need to limit emissions from new DG sources, and to maintain our energy infrastructure in Kent and Sussex County; a summation of our comments suggests the Department consider a significant revision of applicability standards. To simplify the exemption and applicability process, we request Regulation 44 only apply to new distributive generation sources, and not apply to any existing generation sources, more specifically in Kent and Sussex County.

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

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