



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

November 8, 2006

Gene Pettingill
State of Delaware
Department of Natural Resources and Environmental Control
156 South State Street
Dover Delaware 19901

RE: Regulation 25 New Source Review
Stakeholder Comments

Dear Mr. Pettingill,

The purpose of this memo is to provide additional comments for consideration on proposed Regulation 1125 reform; to implement a Facility Emissions Limit ("FEL") program in Delaware.

In response to the Secretary's Start Action Notice to "Amend Regulation 25" issued January 5, 2005, the Department of Natural Resources and Environmental Control ("DNREC" or "the Department") initiated a stakeholder review committee ("the Committee") to assist in the Department's rulemaking efforts and to assure stakeholder consensus and support. Committee members who include NRG Energy, Inc., have participated in this process and provided many comments and suggestions to help develop a rule that is fair, meets EPA equivalency requirements for New Source Review (NSR), and is beneficial for the State of Delaware.

Within this process, NRG has provided comments and documents regarding our position on "FEL Fundamentals" and requirements for regulation design. In addition to these comments and statements, NRG is please to provide the following supplemental comments on the proposed rule for committee consideration.

Program Concept

Chamber of Commerce Comments

NRG is a member of the Delaware Chamber of Commerce and has endorsed the Chamber's comments submitted to the Department on August 8, 2006. To facilitate committee review, most of these comments will not be restated in this comment letter; however the Chamber's comments are to be considered as supplemental comments to this document. NRG adopts the Chamber's comments by reference with one exception. We request Delaware continue to resolve all rulemaking issues and promulgate one final rule, rather than implement interim measures as suggested by the Chamber.

Intent of the Rule

New Source Review is intended to assure existing emission sources, currently not subject to NSPS, would be required to meet the same standards of a new plant if the source undergoes a major modification or replaced. This is clearly stated in the *Preamble* of proposed Regulation 1125. Further, the intent of EPA's reform was designed to simplify a very complicated determination on what is routine maintenance, replacement in kind, or a significant modification and eliminate misunderstandings and potential litigation over interpretation of the law that is unclear.

The FEL as proposed does not support this overarching intent; rather is designed to act as a surrogate emissions reduction program. During the stakeholder process, it was made clear by the Department that revision of Regulation 1125 should not only address EPA reform targets, but act to support Delaware's National Ambient Air Quality Standards planning and act to lower emission where possible. With this intent, the FEL concept can not meet the equivalency determination and far exceeds the intent of this rulemaking purpose. NSR programs are not intended to reduce emissions; there are many other programs on the federal and state level that are designed to do this. Therefore our FEL must allow sources to operate without restriction until significant modifications are made, and then be consistent in treatment with the intent of EPA's NSR regulations.

Regulation 1146 Impact

Proposed Regulation 1125, Section 2.0 provides a definition for a well controlled source. As discussed in committee, the regulation needs to address the association with proposed Regulation 1146 and the classification for the affected generation sources. An additional category should be included in this section.

NRG supports the concept that any source in compliance with Regulation 1146 will be deemed a "Well Controlled Source" however because compliance of this regulation as proposed is not feasible, the Department must consider alternative adaptation of this regulation.

EPA Equivalency

The FEL as proposed most likely will not meet EPA's equivalency determination. The regulation is problematic because it is not optional, places historical production caps on facilities, requires back end controls to increase or use current permitted capacity, and constrains sources that have not made any modifications. We suggest DNREC amend the FEL limitations to align with EPA reform objectives by adopting EPA's current reform or providing options to adopt the FEL as an option rather than be mandatory for all Title V sources.

Generation Production Cap

The FEL by design will impose historical based production caps on facilities that otherwise would not exist within EPA's NSR reform. These caps would occur with no increase in emission rate (lbs./hr) or any modification to the unit. While many industrial and manufacturing businesses are designed to operate at full capacity, electric power

generation facilities are design to respond to system load demands and retain reserve capacity to meet anticipated system requirements. For this reason, plants typically operate well below design capacity. During the stakeholder review process, NRG presented data to the committee to verify Indian River's traditional capacity factor in relation to installed capacity and annual increases in operating hours as a result of increasing system demand. As proposed, regulation 1125 would place a production cap on these facilities based on historical operations which is already less than current generation. As a result, these units would not be able to meet their system reliability obligations to provide power whenever and where ever it is needed.

Editorial and Section Comments

Section 2.0 – Definitions

Actual Emissions – Please amend the criteria to permit individual 12 month durations to assure facilities can use data that is representative of normal operations and operations potential.

Begin Construction – Please amend the definition to permit preparatory work which would include site development, foundations and piping so that this definition is consistent with Regulation 2.

Section 4.1 – FEL Compliance

Facilities should not be subject to 12 month rolling averages, rather annual in tons per year or emissions rates in lbs./hr. Further, if a rolling average is applied and a facility exceeds its annual limitation, a facility should be given an opportunity to get into compliance without penalty. Similar to the development of the FEL baseline, a facility should have at a minimum 12 months to 24 months to achieve compliance without penalty. Further, if a facility is challenged by an annual tons per year limitation, compliance could be based on not exceeding a lbs./hr limitation.

Section 4.2 – Establishment of FEL's

The baseline for the FEL should be developed on a unit by unit basis to assure a facility will be granted its units specific potential. All unit baselines would then be aggregated to develop one facility baseline. Further, each pollutant should be addressed on an individual basis.

Section 4.3 – FEL Permit Provisions

We request the FEL provide an option to meet either a tons per year limitation or a lbs./hr limitation.

Section 4.4 – FEL Review and Revision

The proposed regulation makes provisions for the FEL to be raised or lowered as required. We agree a facility FEL should be adjusted to correct calculation errors or address more stringent rulemaking efforts. However, we do not agree that the FEL should be revised downward in the event a facility improves operations or emission reduction efficiency, or retires units as a compliance strategy. The only real benefit of an FEL is that any modifications or changes can be made without NSR. That benefit should

not be removed because if the FEL can be amended downward, this then acts similar to the original form NSR that EPA has attempted to reform. Further, while this rule needs to encourage emissions reduction, readjusting a FEL downward may act as a disincentive for continued environmental improvements.

Section 4.5 – FEL Monitoring Requirements

NRG agrees with the monitoring provisions defined in the rule. However, all options must be made available for all emissions. For example in the event a CEMS is out of service, the facility must have the option to utilize other methods that reflect true operations. This is critical because CEMS are designed for other programs such as Acid Rain and NOx Budget where monitor availability is critical and monitor downtime penalties are built into the system. As a result, required data substitution can report a facility out of compliance when actual emissions are not. If CEMS are used, representative data substitution must be allowed or other monitoring methods must be permitted.

In regard to Re-validation, performance testing should not be required in addition to any current Title V requirements and a facility should not have to re-validate data if a change has not been made at the facility. This is an unnecessary expense to the facility.

Hopefully these comments will help to assure the FEL concept can move forward. If you have any questions, please contact me on (302) 540-0327.

Regards,

David Bacher
Regional Manager
NRG Energy Environmental Business

CC: USEPA