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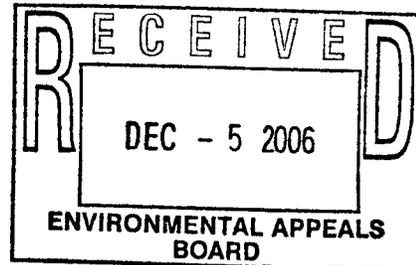
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## BY HAND DELIVERY

Environmental Appeals Board  
89 Kings Highway  
P.O. Box 1401  
Dover, Delaware 19903

ATTENTION: Administrative Assistant to the Environmental Appeals Board

**Re: Appeal of Conectiv Delmarva Generation, Inc. from Order No. 2006-A-0056 of the Secretary of the Department of Natural Resources & Environmental Control, Approving Electric Generating Unit Multi-Pollutant Proposed Regulation as Final Regulation No. 1146 to Delaware Regulations Governing Control of Air Pollution, and Approving Delaware's Proposed Section 111(d) State Plan for the Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units as a Final Planning Document**

Dear Administrative Assistant and Members of the Board:

Conectiv Delmarva Generation, Inc. ("CDG") hereby appeals Order No. 2006-A-0056 (the "Order") of the Secretary of the Department of Natural Resources & Environmental Control ("DNREC"). The Order approves as final an electric generating unit multi-pollutant rule, Regulation No. 1146, to the Delaware Regulations Governing Control of Air Pollution as well as Delaware's proposed Clean Air Act section 111(d) plan for the control of mercury (Hg) emissions ("the Regulation" or "Regulation 1146"). The Order was on DNREC's website as of November 17, 2006, at <http://www.awm.delaware.gov/awm/newsStory.asp?PRID=2291>, and was described in a press release issued by DNREC on November 17, 2006. CDG files this appeal to the Environmental Appeals Board ("EAB") pursuant to 7 Del. C. § 6008 and § 102 of the Regulations of the Environmental Appeals Board. This appeal is being filed within 20 days of receipt or publication as required by 7 Del. C. § 6008(a). This letter sets out the appellant's interests and the basis for this appeal.

## I. INTERESTS THAT HAVE BEEN SUBSTANTIALLY AFFECTED

- A. CDG's interests are directly and substantially affected by the Order and the Regulation.

- B. CDG, a wholly-owned subsidiary of Pepco Holdings, Inc., is a competitive wholesale energy supplier that focuses primarily on serving the Mid Atlantic region. CDG's Edge Moor facilities are specifically identified as being subject to the Regulation. Under the Regulation, CDG will have to install costly and uneconomical technologies on its facilities to reduce emissions of NO<sub>x</sub>, SO<sub>2</sub> and Hg. In addition to installing these technologies, CDG will have to restrict operations of its Edge Moor facilities to comply with annual mass emissions caps established by the Regulation. The Regulation subjects CDG to significant penalties if CDG is unable to comply with the required emissions reductions or meet the annual emissions caps by the deadline dates set out in the Regulation. The Regulation threatens CDG's ability to continue its operations.
- C. CDG attended stakeholder meetings convened by DNREC throughout the winter and spring of 2006, to discuss DNREC's ideas about the development of a multi-pollutant regulation. CDG also attended DNREC's public workshops regarding its multi-pollutant rulemaking on July 31, August 1 and August 2, 2006. On October 2, 2006, CDG provided DNREC with extensive written comments concerning the impact of the proposed regulation on CDG's Delaware operations at Edge Moor. CDG also appeared at and participated in the public hearings on the proposed regulation, held on September 25, 27 and 28, 2006.

## **II. REASONS WHY THE DECISION IS IMPROPER**

CDG is challenging the Secretary's actions as improper and invalid. Regulation 1146 is invalid because it is arbitrary and capricious, was adopted without a reasonable basis in the record, was adopted in a substantially unlawful manner, and is otherwise not in accordance with law. The reasons the Secretary's actions are improper and invalid include, but are not limited to, the following:

- A. DNREC developed the compliance deadlines in the Regulation -- May 1, 2009 (Phase I) and January 1, 2012 (Phase II) -- based solely on information (much of which is outdated) from vendors and EPA concerning schedules that might be followed by generic sources that might have to install the types of pollution control equipment required by Regulation 1146. Without reason, DNREC failed to consider evidence in the record regarding the unique equipment installation difficulties posed by the size and configuration of CDG's Edge Moor facilities.
- B. DNREC failed to determine prior to proposing the Regulation that continuous compliance with the Regulation's short-term emissions limits is achievable on a 24-hour average basis. DNREC also failed to consider evidence that was provided during the public comment period for the rulemaking indicating that continuous compliance with the 24-hour emissions limits was not possible.

- C. There is no rational basis for the annual mass emissions caps for the oil-fired units covered by Regulation 1146. In developing the annual mass emissions caps, DNREC utilized emissions rates associated with best available pollution control technology for new coal-fired units. Even combusting the fuel oil dictated by the Regulation, oil-fired units in Delaware still will not be able to operate at a 100% capacity factor and comply with the annual mass emissions caps.
- D. DNREC established the emissions limits set forth in the Regulation without any evidence in the record demonstrating that compliance with these emissions limits is necessary to attain and maintain compliance with the National Ambient Air Quality Standards.
- E. DNREC failed to adequately evaluate the economic burden and other impacts of the Regulation.
- F. The Regulation is contrary to law because DNREC has not established on the record that the Regulation will effectuate the policy or purpose of 7 Del. C. Chapter 60. For example, DNREC has failed to articulate how the Regulation assures the “reasonable and beneficial use” of the State’s resources (which includes economic uses). See 7 Del. C. § 6001(b).
- G. The Regulation violates state rulemaking requirements of 29 Del. C. Chapter 101, inasmuch as DNREC failed to give meaningful consideration to the comments submitted during the public review of the proposed regulation.
- H. DNREC failed to follow the notice and comment process required by applicable law, including its failure to provide the technical support document for the Regulation until very near the end of the comment period.

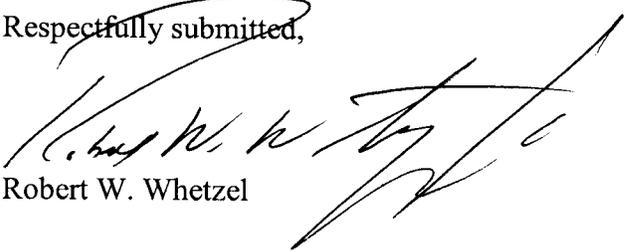
CDG reserves the right to raise other issues that it may identify prior to the hearing in this matter. CDG also reserves the right during this appeal to clarify or comment on issues raised in the record, including CDG’s previous comments, and to offer new evidence that is relevant to or clarifies issues in the record before the Secretary.

### **III. ESTIMATE OF THE NUMBER OF WITNESSES AND THE TIME REQUIRED TO PRESENT CDG’S CASE**

As provided in 7 Del. C. § 6008(c), this appeal is on the record before the Secretary when he made his decision. That record supports the position of CDG as outlined above. If a hearing is necessary, CDG expects to call approximately 6 to 8 witnesses to present and/or clarify issues in the record. CDG expects that presentation of the witnesses’ direct testimony will take approximately 1-2 days.

Enclosed with this filing is a \$50.00 deposit for costs.

Respectfully submitted,

  
Robert W. Whetzel

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Enclosure