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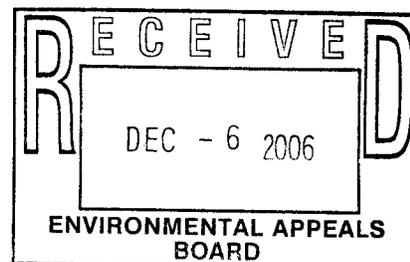
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December 6, 2006

VIA HAND DELIVERY & FACSIMILE

Environmental Appeals Board
ATTN: Gail Donovan, Administrative Assistant
89 Kings Highway
Dover, DE 19901



Re: Notice of Appeal of Regulation No. 1146: Electric Generating Unit (EGU) Multi-Pollutant Regulation And Corresponding Secretary's Order No. 2006-A-0056

Dear Environmental Appeals Board:

Pursuant to 7 Del. C. § 6008, NRG Energy, Inc. ("NRG") hereby appeals the above-referenced regulation and the corresponding Secretary's Order No. 2006-A-0056, adopted by the Delaware Department of Natural Resources and Environmental Control ("DNREC") on November 15, 2006 (the "Regulation"), and published pursuant to 7 Del. C. § 6008(a) on December 1, 2006.¹ This letter provides the information required by § 2.0 of the Environmental Appeals Board Regulations.

I. The Interest Which Has Been Substantially Affected

NRG is a leading wholesale power generation company, primarily engaged in the ownership and operation of power generation facilities and the sale of energy, capacity and related products in the United States. In Delaware, NRG owns and operates the Indian River

¹ By filing this Notice of Appeal on today's date, prior to the expiration of the 20 days from the date of publication deadline, NRG is not waiving any argument regarding the applicable appeal period and specifically reserves its right to supplement this Notice of Appeal.

Power Plant, a 737 MW plant that consists of four coal-fired electric generating units (“EGUs”) and one oil fired combustion turbine. The Regulation requires coal-fired EGUs, including the NRG’s Indian River units, to reduce emissions of sulfur dioxide (“SO₂”), nitrogen oxides (“NO_x”) and mercury (Hg) in two phases. Phase I requires plant-wide emissions reductions beginning in 2009 (through the ability to average emissions among units at a single plant) and Phase II requires further reductions on a unit-specific basis beginning in 2012.

At the outset, we wish to emphasize that NRG is committed to a clean environment in Delaware and this commitment precedes the promulgation of the Regulation. Earlier this year, NRG announced plans to install controls at Indian River that will result in significant emission reductions. Specifically, these planned investments of \$300+ million would reduce mercury emissions from Indian River’s existing generating units by 90%, sulfur dioxide by 80%, and nitrogen oxides by 60% by 2011. The Regulation, however, mandates construction timelines that are impossible to meet. In addition, it prevents Indian River and other power plants from using less expensive control technology that would not only achieve the same environmental results as the Regulation, but also serve to keep electricity rates down. For these reasons and for the reasons set out below, NRG’s interests are substantially affected by the Regulation and NRG must appeal the implementation of the Regulation as proposed.

II. The Adoption of the Regulation is Improper

The decision to adopt the Regulation is improper for the reasons outlined below.

III. Reasons Why the Decision is Improper

A. DNREC’s adoption of the Regulation was arbitrary and capricious or otherwise contrary to law because DNREC violated 7 Del. C. § 6001 and 29 Del. C. § 10101 *et al.* and other applicable laws. For example, the Regulation violates the policy and purposes of § 6001 because it fails to make the maximum contribution to the interests of the people of Delaware and the Order promulgating the Regulation does not satisfy the requirements of § 10118 (b). More specifically, sufficient findings of fact necessary to support the Regulation’s prohibitions were not made during the Regulation’s development.

B. The Regulation fails to take into account the scientific, engineering, economic, and other information provided during the rule-making process and there is no reasonable basis in the record for disregarding such information.

1. The regulatory timetable (Phase I) makes it unreasonably burdensome or impossible to comply with the Regulation. Engineering firm project timelines indicate that such substantial projects cannot get through design, engineering, permitting, and construction in the time frame mandated by the Regulation. Projects with which NRG is associated including the Keystone Flue Gas Desulphurization project provide real and current evidence that these timelines are unrealistic. Moreover, the Regulation does not allow for any “upsets,” engineering or permitting delays, technology non-performance, or other difficulties that normally arise when designing, constructing, and installing expensive and complicated equipment.

2. The administrative record fails to demonstrate or quantify how the unit-specific limitations in Phase II will improve air quality to a greater extent than plant-wide emission limits would and failed to consider the significantly greater economic costs associated with unit-specific limitations versus plant-wide limitations which are the foundation of other states' emission reduction programs.

3. The Regulation fails to provide adequate flexibility in its implementation because, among other things, it fails to establish any mechanism to request and obtain foreseeable and necessary variances other than allowing EGUs to request a one-year extension of the applicable Phase I SO₂ limitations. Moreover, the extension is inconsistent with other timelines not subject to the extension, which eliminates a power plant's ability to utilize the extension option.

4. The administrative record fails to support the Regulation's mercury emissions limitations and removal efficiencies. They have not been shown to be feasible to achieve, have not been demonstrated in practice, and discourage pre-combustion mercury removal through such methods as coal washing using low-mercury fuels. The Regulation also fails to account for reductions in mercury that occur due to the combustion process. Thus, the mercury provision has the counterproductive effect of discouraging the use of many mercury-reducing technologies and practices.

C. DNREC failed to provide adequate notice or an adequate comment period with respect to the "Technical Support Document" on which the Regulation is based. On September 22, 2006, only three calendar days before the first of three public hearings on the Regulation, DNREC posted on its website the "Technical Support Document for Proposed Regulation No. 1146 Electric Generating Unit (EGU) Multi-Pollutant Rule." Although incomplete and insufficient, this was DNREC's first attempt at setting forth its justification for the Regulation. The Technical Support Document is over 65 pages long, references 118 exhibits (DNREC added two additional exhibits during the public hearings), and was made available to NRG and the public only after DNREC established the limits and caps in the Regulation. NRG, other industry stakeholders, members of the public, and citizens groups specifically requested that the comment period be extended to allow for the careful review of and response to the Technical Support Document. However, on October 12, 2006, DNREC's Hearing Office refused to extend the comment period. This improper limitation of the public comment process is in violation of the Delaware Administrative Procedures Act, with which DNREC must comply. 29 Del. C. §§ 10101-119 and 10161.

D. DNREC failed to evaluate properly the Regulation's environmental impacts.

1. DNREC assumes that the Regulation's approach in reducing emissions from EGUs in Delaware will help the state attain certain air quality standards. However, DNREC did not consider state-specific circumstances when evaluating the local effects of emissions. For example, the administrative record contains no references to any emissions, dispersion, or air shed modeling conducted by DNREC.

2. DNREC did not calculate or model the reduced impacts of emissions transport as a result of the U.S. Environmental Protection Agency's ("EPA") Clean Air Interstate Rule and the Clean Air Mercury Rule nor did DNREC calculate or model the impact of other state-specific initiatives on Delaware's ambient air quality.

3. DNREC failed to consider the likelihood the Regulation will encourage power plants upwind of Delaware to generate more electricity resulting in greater transport of pollutants into Delaware thereby actually degrading Delaware's air quality.

E. The Regulation imposes requirements that are stricter than those required by other states and by the EPA without providing any justification for why such stricter requirements are necessary. In addition to the emission specific examples provided above, the Regulation imposes unprecedented monitoring and reporting requirements that are unnecessary.

F. The Regulation constitutes a taking of NRG's property by rendering its assets economically useless in violation of the U.S. and Delaware Constitutions.

G. The Regulation is contrary to law because DNREC exceeded its statutory authority in promulgating a sweeping regulation whose provisions, taken together, risk eliminating an important segment of the power generation industry from Delaware.

In addition to the above-outlined reasons, the Appellant hereby reserves the right to identify other supporting rationales as they may be uncovered during the course of these proceedings.

IV. Estimate of the Number of Witnesses to be Called By Appellant and the Time Required to Present Appeal

The Appellant estimates that it will call 5-8 witnesses and will need approximately 5 days to present this Appeal at a public hearing. The number of witnesses and the time involved in presenting this Appeal may be reduced and even eliminated if the Appellant and DNREC are able to resolve any of these issues on a reasonable basis through negotiation, mediation or other means.

As required in the Environmental Appeals Board Regulations, enclosed is a check in the amount of \$50.00 for the payment of the applicable costs.

We will wait to hear from your office and the Secretary's Counsel's office regarding the scheduling of the date, time and location of the Hearing and other pre-hearing matters referenced

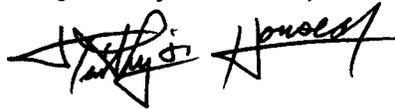
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in the Board Regulations. In the meantime, if this Notice of Appeal prompts any additional questions or concerns, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Timothy Jay Houseal". The signature is stylized with a large, sweeping initial "T" and "H".

Timothy Jay Houseal
Counsel to NRG Energy, Inc.

TJH:lbc
Enclosure

cc: The Honorable John A. Hughes (via Facsimile and Hand Delivery)
Anthony G. Flynn, Esquire
William M. Bumpers, Esquire
Michael R. Bramnick, Esquire