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INDEPENDENT REGULATORY
REVIEW COMMISSION

June 28, 2006

Environmental Quality Board
Rachel Carson State Office Building
15th Floor
400 Market Street
Harrisburg, PA 17101-2301



Subject: Conectiv Energy comments pertaining to the proposed Pennsylvania Nonattainment
New Source Review Regulations

Dear Sir/Madam:

Conectiv Energy (Conectiv) appreciates the opportunity to provide comments regarding the proposed Pennsylvania Nonattainment New Source Review (NNSR) Regulations that were published in the Pennsylvania Bulletin on April 29, 2006.

Conectiv's Bethlehem Plant in Northampton County is located within a nonattainment area for the 8-hour ozone standard. Operations of this facility are constrained by the strict NNSR requirements that already apply in this area. Therefore, Conectiv has a an interest in seeing that the Pennsylvania Department of Environmental Protection (DEP) implements a clear, balanced, and workable set of NNSR regulations. Unfortunately, we believe that the proposed regulations fall far short of those ideals. Our primary concern is that, in many areas, DEP has chosen to make the draft rule more stringent than the corresponding federal NNSR regulations without providing any justification other than to say that this approach is necessary to meet ambient air quality standards. Considering the impact that this regulation will have on the competitiveness of industry in Pennsylvania, the DEP needs to more carefully consider such deviations from the federal rule.

Conectiv offers the following specific comments and suggestions concerning various aspects of the proposed rule.

I. Rule Clarity and Complexity

In responding to the Environmental Quality Board's request for public comments, Conectiv first wishes to discuss our overarching concerns related to the complexity of the rule. Conectiv has been operating under the present NNSR rules for several years and, in our opinion, these existing rules are often vague and difficult to interpret. We were hopeful that this revision would bring some measure of clarity to the rules. Unfortunately, in attempting to correct what are perceived as shortcomings in the federal NNSR rules, DEP has, if anything, made the draft NNSR rules even more complex and difficult to understand. Specific examples of confusing regulatory language can be found in Comment III below.

The federal new source review provisions in 40 CFR Part 51 and Part 52 are among the most complex provisions of the federal environmental regulations. As proof, one needs to look no further than the volumes of guidance memos that the U.S. Environmental Protection Agency (EPA) has written in its attempt to clarify these regulations. In fact, the mere existence of this body of guidance helps to mitigate the complexity of the federal program. Not only does this guidance help to keep interpretation of the rules consistent between different regions of the country, affected sources can search the guidance and often find memos that directly address their specific situation. No such body of guidance exists for the Pennsylvania NNSR program. Firms seeking clarifications regarding confusing provisions of the rule are often given ad hoc interpretations from the local DEP office. These interpretations aren't readily available to the general public, which opens the door to varying interpretations across the Commonwealth.

There may be instances where DEP has valid reasons for deviating from the federal NNSR program, but these deviations should be minimized and based on sound scientific data. In such cases, DEP assumes the responsibility to assure that the rule is, to the extent possible, written so that affected sources can understand it.

II. Nonattainment Area Classification - §127.201(f) et al.

The draft regulation maintains the five-county region in southeastern Pennsylvania as a severe nonattainment area for the new 8-hour ozone standard, even though the EPA has reclassified the region as a moderate nonattainment area for this standard. This approach maintains the existing 25 ton per year applicability thresholds for NNSR as well as the 1.3:1 offset requirements. The reason given for maintaining the severe nonattainment area classification is that it is needed to ensure that the Philadelphia area achieves and maintains the 8-hr ozone standard, which is more stringent than the previous 1-hr standard.

Title 35, Chapter 23, Section 4004.2 of the Pennsylvania Air Pollution Control Act contains a general prohibition against establishing control measures or other requirements that are *"more stringent than those required by the Clean Air Act."* One exception to this prohibition is in cases where the Environmental Quality Board (EQB) determines that it is reasonably necessary for a control measure or other requirement to exceed minimum Clean Air Act requirements in order for the Commonwealth to achieve or maintain ambient air quality standards. While EQB apparently believes that it has met this requirement, there was little or no factual data provided to support their determination.

Due to the considerable costs this decision will impose on businesses within the Commonwealth, EQB should either provide additional data to support their determination that it is appropriate to go beyond the federal requirements in this case, or allow the five-county region to become a moderate nonattainment area for the new ozone standard as designated by EPA.

III. Definitions - §127.201a

Conectiv found the following definitions to be confusing:

- *Major facility* – The definition as provided can be interpreted several different ways. For example, does the use of the term “physical change” exclude other changes that could be considered modifications? Also, does the phrase “which does not exceed the major facility thresholds specified in this subchapter” pertain to the facility at which the change occurs or to the change itself?
- *Major modification* – The way it is written, this definition appears to preclude the use of netting as (A) and (B) are not linked. The federal rules specify that a major modification is determined by a 2-step process, there has to be an emissions increase greater than the applicable threshold and a new emissions increase.
- *Projected actual emissions* – Projected actual emissions are not clearly defined in §127.201a or in the referenced citation [§127.203a(a)(6)] within the definition.
- *Regulated NSR pollutant* – We do not understand paragraph (iii) pertaining to constituent or precursor pollutants.

IV. PM_{2.5} Precursors – §127.202(b) & §127.203(g)

DEP has proposed adding PM_{2.5} provisions to the NNSR regulations, even though EPA has not finalized an implementation rule for this pollutant. EPA has indicated that states should, on an interim basis, use PM₁₀ as a surrogate for PM_{2.5} in meeting NSR requirements under the Clean Air Act, and Pennsylvania should follow this guidance.

One specific portion of the PM_{2.5} provisions that is likely to create widespread confusion is the inclusion of PM_{2.5} precursors to the list of NNSR pollutants. The draft rule doesn't explicitly identify these precursor pollutants, but NO_x and SO₂ are the two most prominent ones. VOC and ammonia could also be considered PM_{2.5} precursors. In the case of NO_x, SO₂, and VOCs, it appears as if the rule would effectively drop the NNSR threshold from 40 or 25 tpy to 15 tpy. This is a significant change that is worthy of careful consideration due to the potential costs and widespread impacts.

Conectiv questions the need to include PM_{2.5} precursors to the list of NNSR pollutants. Modeling conducted by EPA¹ suggests that current emission reductions that are “on the way” as part of the Clean Air Interstate Rule (CAIR) will bring 21 of 22 Pennsylvania counties that have been designated as nonattainment for the PM_{2.5} NAAQS into attainment by the year 2010. The lone exception is Allegheny County, which is impacted by local sources of PM_{2.5}. Applying a 15 tpy applicability threshold for PM_{2.5} precursor emissions could force affected

¹ EPA CAIR website, <http://www.epa.gov/cair/pa.html>, viewed June 19, 2006.

sources throughout the state to install advanced controls that will have little effect on PM_{2.5} levels in Allegheny County. DEP should reconsider this provision in light of the potentially significant costs and limited public benefit that would result. At a minimum, the final rule should clarify what is meant by a PM_{2.5} precursor.

V. Emission Limits - §127.203a(a)(6)

DEP's proposed use of emission limits to make future actual emissions enforceable is not consistent with the federal NSR reform rule. DEP's approach is not materially different than accepting an emission limit to ensure that a major modification threshold is not exceeded which is common under the existing NNSR regulations. Conectiv strongly supports elimination of all language related to limiting projected future actual emissions through an enforceable permit restriction.

VI. De Minimis Emission Aggregation - §127.203(b)(1)

One of the most burdensome provisions of the current NNSR rule also appears in the draft rules: the requirement to aggregate emission increases and decreases to determine compliance with the 100 pound per hour and 1,000 pound per day de minimis thresholds. These short-term emission thresholds apply in addition to the annual thresholds, and are inconsistent with the federal NNSR regulations. EPA regulations do not contain hourly or daily applicability thresholds, nor do they require de minimis aggregation for the annual threshold.

The hourly and daily applicability thresholds unfairly target smaller sources, such as emergency diesel generators, that have potential emissions above the short-term thresholds but that also typically have operating limits that maintain annual emissions at very low levels. Because they target extremely small sources, the short-term (daily and hourly) thresholds are unlikely to contribute to the improvement of air quality in any meaningful way. In addition, they place an unreasonable recordkeeping burden on affected sources. Therefore, Conectiv believes that these short-term thresholds should be removed from the rule.

VII. Multiple Emission Units and Pollutants - §127.203a (a)(5)(i)(D)

The draft NNSR rule states that *"when a project involves multiple emission units or multiple regulated NSR pollutants, one consecutive 2-year period must be used to determine the baseline actual emissions for all pollutants and for all the emission units affected by the project."* The corresponding provision of the EPA NSR reform rule states that, while the same consecutive 24-month period must be used for all emission units being changed, a different 24-month period may be used for each pollutant [see 40 CFR 52.21(b)(48)(i)(c)]. The Pennsylvania rule should be consistent with the federal rule in this regard.

VIII. ERC Generation and Creation - §127.207(1)(i)

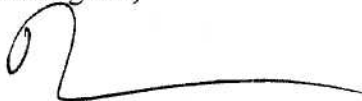
The proposed rule adds a restriction that emission reductions necessary to meet allowance-based programs may not be used to generate emission reduction credits (ERCs). This provision does not make sense because an inherent feature of allowance-based programs, such as the NO_x Budget Program, is that they allow sources the option of purchasing allowances rather than making reductions. Therefore, no source is required to make reductions to meet an emission limit. The decision whether to install controls, purchase allowances, or some combination of the two is usually made purely on the basis of economics.

Conectiv believes that imposing this restriction on the generation of ERCs could, in fact, be counterproductive with respect to DEP's goal of improving air quality. Sources contemplating emission controls in response to market-based programs would otherwise view ERCs as an incentive to install controls or to increase their efficiency. This incentive would be in addition to that provided by the avoiding the cost of purchasing allowances or revenue obtained from the sale of excess allowances. That is because ERCs have a monetary value that can be factored into the economic decision. If DEP excludes such emission reductions from consideration for ERCs, the case for no controls or less-efficient controls becomes more compelling.

If the final NNSR rule is promulgated with this proposed exclusion, then DEP should clarify whether all reductions undertaken in response to allowance-based programs are excluded from eligibility for the creation of ERCs, or whether ERCs can be created for emission reductions that exceed the underlying emission rate goals of the allowance-based program. While Conectiv's reading of this provision is that all emission reductions are excluded, it is not entirely clear.

Thank you for the opportunity to provide comments on these proposed regulations. Should you have any questions or require additional information, please contact me at 302-451-5077.

Kind regards,

A handwritten signature in black ink, appearing to be 'M. Gary Helm', with a long horizontal flourish extending to the right.

M. Gary Helm
Sr. Environmental Coordinator

