2547

Hughes, Marjorie

From: Wortzel, Andrea [awortzel@hunton.com]
Sent: Friday, August 25, 2006 11:28 AM
To: RegComments@state.pa.us
Subject: Comments on Proposed Mercury Rule

RICHMOND-182199
9-v1-Comments o...

To Whom It May Concern:

Attached please find comments on the Proposed Rulemaking on Standards for Contaminants; Mercury, published in the Pennsylvania Register on June 24, 2006. These comments are submitted on behalf of TXU Power. A hard copy will follow by mail.

If you have any questions about these comments, or any difficulty opening the attachment, please call me at 804-788-8425.

Thank you.

Sincerely,
Andrea Wortzel

<<RICHMOND-1821999-v1-Comments on Pennsylvania's Proposed Mercury Rule.PDF>>

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REVIEW COMMISSION

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Michael P. Childers
Chief Executive Officer
Generation Development

August 24, 2006

By Electronic Mail (RegComments@state.pa.us)
and U.S. Mail

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

Re: Comments on Proposed Mercury Rule

To Whom It May Concern:

Thank you for the opportunity to comment on the Proposed Mercury Rule. The principal business of TXU Power (hereinafter referred to as TXU) is the production of electrical energy. TXU owns or leases over 18,300 megawatts of generation capacity. We generate electricity from diversified fuel sources, including natural gas, lignite/coal and nuclear. TXU is committed to environmental excellence, and applauds the measures Pennsylvania is taking to reduce mercury emissions into the environment.

An important aspect of the Proposed Mercury Rule is the incentive not only to install pollution control equipment, but also to encourage the replacement of older units. A critical part of reducing emissions is to encourage state-of-the-art emissions controls and the replacement of older, high emission plants. Based on Pennsylvania's current power supply portfolio, any new base load investment will result in the displacement of more costly, high emission peaking units.

In addition to improved environmental controls, installation of newer units creates the opportunity to more efficiently meet greater load demand as population and energy demands continue to grow. For this reason, TXU supports the provision in the Proposed Mercury Rule (Section 123.207(l)) that provides the Department with the flexibility to revise the percentage of set-aside for new units. This flexibility provides an important opportunity to ensure that adequate allowances are available for new EGUs.

Despite the flexibility provided under Section 123.207(l), TXU is concerned that the Proposed Mercury Rule will have a chilling affect on the goal of improved efficiency offered by new plants because of the uncertainty associated with the allocation of mercury allowances to new units. Under the current proposal, it is unclear when and how allowances will be allocated to new units, and there is no guarantee of the continued availability of allowances for the future operation of new units.

Additionally, it is unclear whether new units remain designated new units, allocated allowances only out of the supplement pool, in perpetuity. Defining a permanent distinction between existing and new unit allowances will act as a disincentive for fleet turnover by capping the future entry of new plants.

TXU suggests the following as a means of alleviating the uncertainty about availability of allowances for new units:

Timing of Issuance of Allowances to New Units

The proposed rule does not state when "new affected emission generating units" will be allocated allowances. Once an air permit is issued for any type of new emission generating unit, the applicant will enter into contracts to commit millions of dollars for project development and construction. To validate this commitment, there must be some assurance that there will be mercury allocations available for the new units. TXU suggests adding language to the Proposed Mercury Rule clarifying that new units will be issued mercury allocations out of the new unit set aside allowances as part of Plan Approval or issuance of an operating permit. This allocation would not be transferable, and would return to the supplement pool should the project not move forward. Proposed language implementing this suggestion is provided as an attachment.

Transition of a New EGU to Existing EGU Status

There is no provision for the transition of new units to existing unit status for purposes of allocating annual nontradable mercury allowances. The baseline heat input in MMBtu for allocating nontradable allowances to each existing EGU is based on the average of the three highest amounts of annual heat input using the heat input data from the Department's acid rain database for calendar years 2000 through 2004. Once a new EGU has four years of operating data it should transition to existing unit status, and receive an allowance allocation from the existing source pool of allowances. Until that time, the new unit should retain the annual nontradable mercury allowances at the level identified in its Plan Approval or Operating Permit. Proposed language implementing this suggestion is provided as an attachment.

Thank you again for your time and consideration of these comments. If you have any questions about these comments or would like to discuss these issues further, please call.

Sincerely,

Mike Childers

Attachment

Attachment

TXU's Suggested Revisions to the Proposed Mercury Rule

Following is suggested language (new text in bold and underlined) to implement TXU's comments relating to the timing of the issuance of allowances to new units and the transition of a new unit to existing unit status.

§ 123.202. Definitions.

Existing EGU--An EGU which commenced construction, modification or reconstruction before January 30, 2004**, or that has four years of heat input data as of December 31 of the preceding reporting year.**

New EGU--An EGU which commenced construction, modification or reconstruction, as defined under 40 CFR Part 60 (relating to standards of performance for new stationary sources), on or after January 30, 2004, **until it has four years of heat input data as of December 31 of the preceding reporting year at which time it will become an existing EGU.**

§ 123.207. Annual emission limitations for coal-fired EGUs.

(c) *New affected EGUs.* For each calendar year beginning January 1, 2010, the Department will set aside a total number of annual nontradable mercury allowances for the owners and operators of new affected EGUs in this Commonwealth that do not yet have a baseline heat input determined in accordance with the requirements of an approved plan approval application of operating permit. **The Department will allocate the set aside allowances for new affected EGUs at the time of Plan Approval or issuance of an Operating Permit. Once a new affected EGU has four years of operating data it will become an existing EGU, allocated allowances in the manner outlined under this regulation and consistent with federal regulations.**

(3) The unused portion of annual nontradable mercury allowances set aside under subsection **(c)**, (d) or (f) may not be added to the maximum number of annual nontradable mercury allowances set aside for the owner or operator of the affected EGU for subsequent years.