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**From:** rrperry@firstenergycorp.com  
**Sent:** Monday, December 21, 2009 4:26 PM  
**To:** EP, RegComments  
**Subject:** Proposed Rulemaking, Environmental Quality Board [25 PA. CODE CHS. 121, 127 and 139], Air Quality Fee Schedules, [39 Pa.B. 6049] [Saturday, October 17, 2009]  
**Attachments:** FGCO PA DEP Emission Fee Comments 12 21 2009.pdf

Attached are FirstEnergy Generation Corp.'s comments concerning PA DEP's proposed Air Quality Fee Schedules. Should you have any questions feel free to contact me.

(See attached file: FGCO PA DEP Emission Fee Comments 12 21 2009.pdf)

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**DEC 23 REC'D**

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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**FirstEnergy**  
Generation Corp.

INDEPENDENT REGULATORY  
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December 21, 2009

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Filed electronically via RegComments@state.pa.us

**Subject: Proposed Rulemaking, Environmental Quality Board [25 PA. CODE CHS. 121, 127 and 139], Air Quality Fee Schedules, [39 Pa.B. 6049] [Saturday, October 17, 2009]**

Environmental Quality Board:

Following are the comments of the FirstEnergy Generation Corp. (FGCO) to the Proposed Rulemaking, Environmental Quality Board [25 PA. CODE CHS. 121, 127 and 139], Air Quality Fee Schedules, [39 Pa.B. 6049] [Saturday, October 17, 2009]. FirstEnergy Generation Corp. appreciates the opportunity to provide comments on the proposed "Air Quality Fee Schedules."

**The increase in emission fees from \$56 to \$70 as proposed under Section 127.705 is excessive.**

The Clean Air Act Amendments of 1990 state under Title V Section 502 (b)(3)(B)(i):

*The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in subparagraphs <sup>(2)</sup> (ii) through (v) of this subparagraph, the program will result in the collection, in the aggregate, from all sources subject to subparagraph (A), of an amount not less than \$25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program.*

The Clean Air Act Amendments of 1990 under Title V Section 502 (b)(3)(A)(i) through (vi) also provide the requirements of a permit program:

**(A)** *A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this subchapter pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this subchapter, including section 7661f of this title, including the reasonable costs of—*

- (i) reviewing and acting upon any application for such a permit,*
- (ii) if the owner or operator receives a permit for such source, whether before or after November 15, 1990, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),*
- (iii) emissions and ambient monitoring,*
- (iv) preparing generally applicable regulations, or guidance,*
- (v) modeling, analyses, and demonstrations, and*
- (vi) preparing inventories and tracking emissions.*

In addition, the Clean Air Act Amendments of 1990 under Title V Section 502 (b)(3)(B)(v) state:

*(v) The fee calculated under clause (i) shall be increased (consistent with the need to cover the reasonable costs authorized by subparagraph (A)) in each year beginning after 1990, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this clause—*  
*(I) the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year, and*  
*(II) the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.*

Presumably PA DEP is already collecting sufficient fees to cover the “reasonable cost of the (Title V) permit program.” We fail to see the necessity of such a dramatic fee increase from \$56 per ton to \$70 per ton. The Bruce Mansfield plant paid \$485,000 in Title V fees in 2009. This increase will result in our Bruce Mansfield plant paying nearly \$150,000 in additional fees. Title V is a mature program and there are no anticipated changes to the existing Title V program that would warrant such a large increase.

In addition, this dramatic increase was proposed late in 2009 well after operating budgets had been completed for 2010. Additional fee increases were not incorporated into very tight 2010 budgets. We encourage the Agency not to impose this huge fee increase and limit any emission fee increase to an adjustment in the consumer price index. If the Agency can demonstrate a need to impose these dramatic increases, we encourage the Agency to delay the increase until 2011 when the regulated community can budget for this increase.

**The addition of 22 new definitions with associated fees should not apply to Title V facilities.**

PA DEP has added 22 new definitions with significant new fees associated with each of these activities. A significant number of these new activities relate to Continuous Emission Monitoring or CEMs related activities. Title V facilities should be exempt from these additional fees as those costs are already reflected in the annual emission fees imposed on Title V facilities. [CAA Section 502 (b)(3)(A)(i) through (vi)] Imposing these additional fees on Title V facilities is the equivalent to double charging. As we

state above, the Bruce Mansfield plant is already paying nearly \$500,000 annually in Title V fees including CEMs systems.

If you have any questions or comments please do not hesitate to contact me at 216-524-8960 or by email at [rrperry@firstenergycorp.com](mailto:rrperry@firstenergycorp.com). Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Perry". The signature is fluid and cursive, with the first name being the most prominent.

Robert R. Perry  
Advanced Scientist  
FirstEnergy Corp.