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FirstEnergy

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June 28, 2006

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

Re: Comments on Pennsylvania Commonwealth's Proposed Rulemaking Nonattainment New Source Review (SS121.1 and 127 Subchapter E)

Dear Sir or Madam:

FirstEnergy Corp is the parent company for the following electric utilities Penn Power, Penelec and Met-Ed. FirstEnergy Corp submits the following comments on the Pennsylvania Commonwealth's Proposed Rulemaking on Nonattainment New Source Review (Chapters 121.1 and 127 Subchapter E).

Pennsylvania automatically incorporated the PSD requirements of the 12/31/02 Federal NSR Rule on March 3, 2003 by reference to Chapter 127, Subchapter D. However, the Commonwealth did not automatically incorporate the Federal nonattainment NSR provisions by reference and have therefore proposed their own rulemaking to address the amendments to the nonattainment NSR program. Following are FirstEnergy Corp's comments on Pennsylvania's proposal.

General Comments - The proposal is unnecessarily more stringent than the federal program. Without justification, the preamble states that more stringent requirements are necessary, "to achieve or maintain the NAAQS." However, FE sees no reason why changes to NSR requirements for PM-10, SO2 or pollutants other than ozone precursors (NOx and VOC) are necessary when attainment problems for such pollutants are not a realistic concern. FE requests that the Board provide documentation to support their position.

We request that the Board adopt final rules that model the federal rules. Areas where Pennsylvania rules must differ should be kept to a minimum and be justified by sound scientific data. Making the rules consistent will not only make SIP approval easier, but will simplify permitting for both DEP and industry since the PSD and NSR programs would closely match.

Unnecessarily stringent requirements places an economic burden and disadvantage on Pennsylvania as industry might be discouraged from moving into the Commonwealth opting rather to place sources in other states with less complex permit requirements.

Look-back provision for calculating baseline emissions - *Whereas EPA allows facilities to choose any 2 consecutive years in the preceding 10 as their baseline (any 2 in the preceding 5 years for utilities), Pennsylvania is proposing (127.203a – Applicability Determination) all facilities (including non-utility facilities) would be limited to a "2-yr. look-back."*

Pennsylvania should adopt EPA's 10-yr look back approach for determining baseline actual emissions. A 5-yr period would disadvantage industry because it isn't long enough to allow for economic downturns or long outages. A 10-year cycle is more representative of a normal business cycle for most industries. If the EQB proceeds with a 5-year look-back, the rule should allow for a mandatory 5-year look-back period with the option to allow for a different 2-year period in the last 10 years if such period is more representative of normal operations.

In addition, SS127.203a(5)(D) states that for projects involving multiple emissions units or multiple regulated NSR pollutants, or both, **one** consecutive 2-year period must be used to determine the baseline actual emissions for all pollutants and emissions units affected by the project. This would present a problem for complex facilities since various factors could impact emissions and pollutants from each emissions unit. For example, whereas a particular 2-year period may represent "normal" conditions for one emission unit, another emission unit may have been off line or operated at reduced capacity during that 2-year period for economic reasons. If determination of representative emissions is the goal, EQB should allow the use of a different 2-year period to determine baseline emissions for each emission unit and each pollutant affected by a project as does EPA.

Emission Limit for a Proposed Project - FE requests that this requirement should be clarified or eliminated. Under EPA's approach, facilities are only required to track emissions for a period of time following a modification. Pennsylvania is proposing a very complicated approach which involves using the summation of "baseline actual emissions; emissions that could previously be accommodated prior to the proposed modification; and the projected actual emission increase due to the proposed project." This data would be used to determine compliance and tracked for 5 years (10 years if there is a capacity increase). In addition, facilities would be required to demonstrate compliance with the projected actual emission increase which is due solely to the project. These provisions are not only more stringent than the federal equivalent, but are confusing. FE recommends that the EQB adopt the federal approach of recordkeeping and reporting to ensure that projects that do not trigger NSR do not in fact trigger NSR.

If the EQB proceeds with an emission limit approach, then 127.203a(a)(6) and (7) should be clarified. First, it is unclear whether the emission limit must be established prior to beginning actual construction on the project. We oppose any procedural requirements (*e. g.*, obtaining a plan approval) that would delay projects and hamper operational flexibility. Second, the numerical limit that would be established based on the regulations is unclear. It appears to be equivalent to the pre-change "potential-to-emit" (PTE) plus any increase in the PTE attributable to the project. We suggest that these provisions be clarified or explained if they are not deleted.

Also, in Section 127.201, the proposed rule would subject the 5-county area (redesignated as moderate non-attainment for 8-hr ozone) as if it was severe non-attainment, penalizing an area that has made significant reductions in emissions over the past 10 years. This is unfair and puts this area at an economic and competitive disadvantage. This requirement should be deleted.

Significant Emissions Increase - EQB should not finalize rules that require aggregation of less than significant emission increases. Pennsylvania's proposal requiring aggregation of small projects is inconsistent with the federal requirement. Under the federal rules, one must first determine if the project itself results in a significant emissions increase; if it does, then determine if the net emissions increase is significant. The proposed rule applies to a "net emissions increase" inconsistent with EPA's approach. FE believes that a 5-year period is sufficient for "de minimis emission increases, not 15 years as proposed.

The existing aggregation provisions and some of the definitions from the current rules do not fit with the new actual-to-projected actual test for determining emission increases. It seems logical to base the de minimis levels on the new actual-to-projected actual test; however, "de minimis emission increase" is defined based on an increase in "actual emissions" or the "potential to emit." While FE believes that the concept of aggregation should not be included, if it is, it is suggested that EQB reconcile some of the old concepts with the new actual-to-projected actual test.

The 100 lb/hr 1,000 lbs/day thresholds in the definition of "significant" for NOx and VOCs should be deleted. These short term thresholds are more stringent than the federal program and simply serve to further complicate NSR. (Emissions could be easily overestimated since most sources don't operate 24 hrs/day.) To the extent that the EQB retains these triggers, it should explain the reason for them and the necessity for them in attaining and maintaining compliance with the ozone NAAQS.

LAER Requirements - We request clarification of section 127.205(1) relating to LAER requirements and how LAER applies in the aggregation context. The proposed rule requires a modified facility subject to NSR to comply with LAER "except as provided in 127.203a(a)(4)(ii)(B)." the cited section does not exist. We believe that the appropriate cross reference may be 127.203a(a)(4)(iv). While section 127.203a(a)(4)(iv) itself needs to be clarified, we believe that the intent is to require "de minimis" projects to be aggregated and the entire "net" increase be offset once the aggregated smaller projects trigger the significance threshold. However, LAER need not be applied to any 'de minimis" or less than significant project. While we do not support the aggregation concept, if it is retained, the LAER applicability provisions need to be clarified. In addition, the new sentence added to the end of 127.205(I) should be deleted. It appears to require LAER for "less than significant" projects if these projects are "directly related to and normally included in the project ...." This provision invites debate and creates additional uncertainty in an already confusing and uncertain regulatory program. It is more stringent than the federal program and should be deleted.

PM2.5 Precursors - Clarification of the scope of the pollutants regulated by the proposed NSR rules is needed. The rules include a new definition of "regulated NSR pollutant" which includes

"precursors" of any pollutant for which a NAAQS has been established. The scope of such "precursors" should be clarified, particularly with respect to PM2.5. The rules refer to PM2.5 precursors with a means of excluding a particular precursor if EPA or DEP determines that the precursor emissions do not contribute significantly to PM2.5 levels in a particular nonattainment area. We note that the EPA recently proposed rules regarding the regulation of VOCs, SO2, NOx and ammonia as PM2.5 precursors. (*See* 70 Fed. Reg. at 65999 (November 1, 2005). We suggest that the EQB wait for a final rule from EPA on the PM2.5 precursor issue before attempting to establish a PM2.5 NSR program. If the EQB proceeds with the PM2.5 precursor rule, it should follow the EPA proposed rule which suggests that some of the PM2.5 precursors (e.g., ammonia and VOCs) should not be regulated under NSR programs.

Startups/Shutdowns/Malfunctions - Emissions from start-ups, shutdowns, and malfunctions should not be treated differently under the definitions of "baseline actual emissions" and "projected future actual emissions." Section 123.203a(a)(5) indicates that emissions from start-ups and shutdowns are to be included in the baseline actual emissions only if they are "authorized," while the projected future actual emissions include emissions from startups and shutdowns regardless if they are authorized. The proposed rule is different and apparently more stringent than the federal rule.

Misc. - The cross reference to "paragraph (6)(i)" in 127.203a(a)(7) should probably be to "paragraph (6)(iii)."

The phrase "begin actual construction" is defined but does not appear to be used anywhere in the substantive rules.

The term "actual emissions" is defined differently than the corresponding federal definition. For example, the federal rule does not require a more representative period to be determined in writing. The EQB should adopt the federal definition or explain the reason for the differences. Also, this language as proposed: "hours of operation or both, and the most stringent of the following ..." could be construed to impose Part 60 (NSPS) or Part 61 (NESHAP) emission limits on otherwise unaffected units in the calculation of allowable emissions. The Subpart (i) of the definition should be clarified so as not to subject previously unaffected units to NSPS or NESHAP standards.

Offsets - EPA offset requirements change from 1:3 to 1:1.15, while Pennsylvania's remain the same. Having Pennsylvania's offset requirements more stringent than EPA creates an unfair disadvantage to industry in Pennsylvania compared to other States that operate under the less stringent federal requirements.

SS 127.203a- This provision would subject all new emissions units to NNSR. There is no incentive for facilities to reduce emissions (by installation of controls or permanent retirements) from existing sources.

SS 127.201(c) General Requirements - A facility within a basic nonattainment area for ozone will now be considered to be a major facility and subject to the requirements applicable to a

major stationary facility located in a moderate nonattainment area. What is the basis for this more stringent requirement? The Federal rules are adequate protection for the NAAQS.

Thank you for the opportunity to comment on this proposal. If you have any questions please contact Gail Twymon, (330) 761-4487.

Sincerely,

Gail Twymon

M. Gail Twymon, Sr. Environmental Specialist
FirstEnergy Corp Environmental Department