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June 27, 2006

By Messenger

Office of the Administrator
U.S. EPA
Room 3000
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Re: Docket No. EPA-HQ-OAR-2004-0076

Dear Sir or Madam:

Enclosed is a Petition for Reconsideration that we attempted to file by messenger at EPA on Tuesday, June 27 before 4:00 pm. EPA was officially closed today, due to the rainstorms in DC over the last several days. EPA had been closed Monday, June 26, and remained closed on June 27 as well. This made filing by messenger on Tuesday, June 27 impossible.

Thank you for your consideration of this petition. If you have questions or would like additional information, please contact us.

Very truly yours,

Lisa M. Jaeger /kc

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Bracewell & Giuliani LLP

Enclosure

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Office of the Administrator
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Room 3000
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Re: Docket No. EPA-HQ-OAR-2004-0076

On behalf of the Colver Power Project., enclosed please find a Petition for Reconsideration of Of the Rulemaking on Section 126 Petition from North Carolina to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program 71. Fed. Reg. 25328 (April 28, 2006). Specifically, Colver requests that EPA reconsider issues relating to the treatment of waste coal units under the rule.

Thank you for your consideration of this petition. If you have questions or would like additional information, please contact us.

Very truly yours,

Lisa M. Jaeger /KC

Lisa M. Jaeger
Bracewell & Giuliani LLP

Enclosure
cc: Mr. William Wehrum, Acting Assistant Administrator for Air and Radiation, EPA
Ms. Ann Klee, General Counsel, EPA
Mr. Sam Napolitano, Office of Air and Radiation, EPA

Also Licensed in Maryland

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC

RULEMAKING ON SECTION 126 PETITION FROM NORTH CAROLINA TO REDUCE INTERSTATE TRANSPORT OF FINE PARTICULATE MATTER AND OZONE; FEDERAL IMPLEMENTATION PLANS TO REDUCE INTERSTATE TRANSPORT OF FINE PARTICULATE MATTER AND OZONE; REVISIONS TO THE CLEAN AIR INTERSTATE RULE; REVISIONS TO THE ACID RAIN PROGRAM

71 FED. REG. 25328 (APRIL 28, 2006)

Petitioner
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June 27, 2006

INTRODUCTION

Pursuant to § 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. § 7607(d)(7)(B) and for the reasons set forth below, the Colver Power Project petitions the Administrator of the United States Environmental Protection Agency (EPA) to reconsider specific provisions relating to the regulation of waste coal-fired units under the Clean Air Interstate Rule Federal Implementation Program (CAIR FIP).

On August 24, 2005, EPA proposed the "Rulemaking on Section 126 Petition From North Carolina To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program" (CAIR FIP). (70 Fed. Reg. 49708. EPA issued its final CAIR FIP on April 28, 2006 (71 Fed. Reg. 25328).

Reconsideration of the rule is warranted because the grounds for the issues identified below, which are "of central relevance to the outcome of the rule," arose after the public comment period or could not be raised due to impracticability. 42 U.S.C. § 7607(d)(7)(B).

SUMMARY OF PETITION

The Colver Power Project (Colver) is a small, independent power producer that burns waste coal as its sole fuel source. Colver is one of 18 waste-coal plants in the US with state-of-the-art air emissions control technology designed to recover energy value from waste coal without compromising the achievement of goals under the Clean Air Act. Waste-coal plants are very unique facilities that operate under a series of federal, state and local laws and long-term contracts, all of which severely constrain their financing, tax status, fuel use, power production, air emissions, and power sales. The plants were built expressly to eliminate the environmental threat of 2.4 billion pounds of waste coal while producing power from that valueless waste stream.

Congress has long recognized the benefits of these plants, and encouraged their development by providing them tax-exempt financing in the IRC and qualifying facility status in PURPA. In 1990, Congress again examined these plants in the context of Title IV of the Clean Air Act. These were new, small BACT sources with permitted SO2 emission requirements that would not be required for another 15 years of existing conventional power plants. Congress exempted such small, low-emitting sources from Title IV and did not allocate them allowances. Congress took every measure to ensure the continuing viability of these sources.

In contravention of the careful stewardship of this source category by Congress, EPA in the CAIR FIP has imposed new regulatory requirements that jeopardize their continued operation. The CAIR FIP rule and record reflect EPA's failure to appreciate the

complexity of these circumstances and arbitrary and capricious decision-making. They also reflect an agency regulatory approach that contravenes express decisions by Congress to exempt them and not interfere with their existing obligations under Power Purchase Agreements (PPAs). The CAIR FIP will apply in all States that either do not timely obtain approval for and adopt a SIP, or that adopt the FIP as the state program, and in this way Colver will be directly affected by EPA's rule.

BACKGROUND

Coal refuse is the low Btu-value waste material discarded from coal mining for more than 150 years, through the late 1970's. Coal refuse is primarily rock with some attached carbon material. This material remains in piles in Pennsylvania's coal regions 2.4 billion tons of coal refuse had been abandoned in Pennsylvania.

With the commercial development of the circulating fluidized bed (CFB) boiler, this low Btu-value material is used to produce clean energy. Since the late 1980's, waste coal plants in Pennsylvania have removed over 100 million tons of coal refuse and reclaimed over 3,800 acres of abandoned mine lands at no cost to taxpayers. Reclamation is accomplished, while the energy from the waste coal is conserved and the energy is sold at a fixed price. These environmental benefits contribute to achieving national environmental goals set forth in the Resource Conservation and Recovery Act (RCRA)[1] and other federal and state laws.

By reclaiming abandoned strip mines and abating acid mine drainage from waste coal piles, Colver and other facilities using waste-coal for fuel remove a source of groundwater (and ultimately drinking water and surface water) contamination, eliminate threats to air quality, improve the landscape, return land to productive use and generate electricity. States with citizens subjected to the potential harm to the water supply have every interest in ensuring the ongoing operation of these plants. Pennsylvania, home to most of the waste coal in the nation, has participated in the CAIR rulemakings to ensure the viability of these plants due to their significance to the state in addressing a longstanding environmental threat to its citizens.[2] Reclamation is the only way to eliminate the continuing environmental threat from coal waste. Were the coal not used to generate electricity, standard reclamation procedures would require PA taxpayers to shoulder exorbitant costs.

In addition to significant environmental and health benefits under RCRA, Colver and waste coal plants also contribute to the nation's energy diversity, which is no less a federal concern than environmental protection. Developing all domestic sources of energy has been a national priority since at least 1968, when Congress created incentives to encourage the development of this and other energy sources. In the recent Energy

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[1] 42 U.S.C. § 6902(a)(b).

[2] See Comments filed by PA Department of Environmental Protection (January 17, 2006).

Policy Act of 2005 (EPAct), Congress recommitted the nation to find ways to conserve energy and diversify energy sources, with a clear preference for domestic over imported sources of energy.[3]

Colver and other waste facilities were permitted with state-of-the-art, clean-coal technology that relies on CFB boilers. CFB units are clean-burning and emit air pollutants at rates at the lowest possible rates for burning waste coal. Limestone injection technology allows even greater SO2 reductions. Colver achieves a 95% reduction in SO2 and is SO2 permitted for 0.6 lbs/mmBtu. Colver is financed by federally and State tax-exempt municipal bonds. The Colver plant is subject to a PPA with Pennsylvania Electric, signed in 1988 and in effect through 2020. In the PPA, Colver warrants that it will meet all applicable requirements for a "qualifying facility" under PURPA. Colver was certified by the Federal Energy Regulatory Commission as a qualifying small power producer in 1987. To maintain QF status, Colver must burn waste coal.

These statutory, regulatory, financing and contractual requirements restrict Colver in its fuel source and impose operational constraints unique to waste coal small power producers.

SPECIFIC ISSUES FOR RECONSIDERATION

I. EPA DID NOT SUFFICIENTLY ANALYZE DATA REGARDING WASTE COAL-FIRED FACILITIES AND DID NOT ANALYZE SUFFICIENT DATA FOR ITS CONCLUSIONS TO BE REPRESENTATIVE OF THE SOURCE CATEGORY

EPA included waste coal-fired facilities, such as Colver, in the CAIR FIP. In eliminating the exemption for waste coal-fired units in the CAIR FIP, EPA based its decision on insufficient data as reflected in the Technical Support Document.[4] The TSD does not

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[3] Congress established these goals in the EPAct:
(a) In General- In order to achieve the purposes of this title, the Secretary shall conduct a balanced set of programs of energy research, development, demonstration, and commercial application with the general goals of -

(1) increasing the efficiency of all energy intensive sectors through conservation and improved technologies;
(2) promoting diversity of energy supply;
(3) decreasing the dependence of the United States on foreign energy supplies;
(4) improving the energy security of the United States; and
(5) decreasing the environmental impact of energy-related activities.

Section 908(a)(1), Energy Policy Act of 2005, P.L. 109-58.

[4] See Technical Support Document for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule): Final Notice of Action on the Reconsideration – EPA Docket No. OAR-2003-0053 (March 2006) (hereinafter "Reconsideration TSD")

contain sufficient data to support EPA's decision to regulate these sources as envisioned by EPA.[5]

When evaluating the ability of coal waste units to opt-in to the Title IV acid rain program, EPA limited its review to four facilities and stressed in its technical analysis that the data was limited.[6] EPA failed to provide anything to support the notion that these facilities are representative of the waste-coal combustion industry as a whole. Prior to conducting its analysis, EPA had been informed by the waste coal combustion sources that waste-coal plants vary greatly in many respects, particularly in their SO2 emissions.[7] In relying upon this small and unrepresentative sample size, EPA abrogated its responsibility to sufficiently review and analyze data, guaranteeing that the results of its analysis would be flawed.

EPA used the information on four facilities to make decisions about the waste coal combustion industry as a whole. For example, EPA stated, "some, if not many, of the facilities would receive title IV opt-in allocations very similar to their current emission levels."[8] EPA failed to address the fact that all four facilities would receive allowances insufficient to cover their current allocation levels. Moreover, EPA declined to address at all the impacts on the facility that would receive less than half of the allowances necessary to cover its current allocation levels.[9] Nor did EPA determine whether, among the 9 sources for which it had no data, there were others that would be impacted to that extent. While noting that the potential impacts of title IV and CAIR on waste coal-fired units would vary, EPA declined to include a more comprehensive analysis in its TSD.

In eliminating the exemption under the CAIR FIP, EPA relied upon insufficient and non-representative data in its Technical Support Document. EPA's failure to obtain representative and sufficient data shows that the CAIR FIP is the product of arbitrary and capricious decision making.

Similarly, EPA failed to obtain and analyze full and accurate information to estimate the costs of operating a typical waste coal-fired unit.[10] As part of its decision to eliminate the exemption, EPA made an assessment of whether sources could feasibly comply with the Title IV opt-in. For the reasons stated above, without data on all (or at least most) of the waste coal-fired facilities, EPA could not accurately project the operating costs of a typical circulating fluidized bed (CFB) unit that combusts waste coal. Therefore, EPA's operating cost estimates are also the product of arbitrary and capricious decision-making.

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[5] Id. at 2.

[6] Id. at 5.

[7] Id. at 5; See also comment submitted by Billie Ramsey, Executive Director, Association of Independent Power Producers (ARIPPA), EPA-HQ-OAR-2004-0076-0184.

[8] Reconsideration TSD at 5.

[9] Id.

[10] See id. at 6.

II. THE TECHNICAL SUPPORT DOCUMENT RELIED UPON BY EPA DOES NOT ACCOUNT FOR CRITICAL FINANCIAL CONSIDERATIONS AND IS OTHERWISE FLAWED.

A. EPA's cost to revenue analysis in its technical support document is based on an improper calculation of cost per ton of SO2 emissions.

EPA's data and calculations of compliance feasibility are not transparent and cannot be fully assessed for accuracy. In its March 2006 TSD, EPA represented that the SOx allowances turn-in ratio has been addressed in the IPM modeling run and the projected costs of allowances are $616 for 2010 and $892 for 2015.[11] EPA then estimated projected costs for waste coal sources based on those per allowance projections. In a later, corrected analysis, EPA projected the price of CAIR Allowances for 2010 at $686/ton and 2015 at $994/ton.[12] Then in its IPM modeling run, data indicate that the non-CAIR shadow price (price per ton of allowance) would be $392/ton. If the turn-in ratio is 2:1, one would expect the price to be $784/ton as a CAIR shadow, not $616 per ton. In 2015 the CAIR shadow price is $892 per ton and the non-CAIR price is ($367 per ton). One would have expected, at a turn-in ratio of 2.86:1 that the price would be $1050 per ton.

But even taking EPA's lowest allowance cost projection, EPA projects the cost to comply for waste coal sources to be greater than what is feasible for these plants. The cost of SO2 allowances is critical to accurately assessing impacts to a facility of the regulation to be imposed. In the case of waste coal small power producers, which operate under unusual constraints, a dependable prediction is critical.

B. EPA improperly utilized a percent-of-revenue approach for compliance feasibility and concluded that a 1-4% ratio is an acceptable ratio for these units.

EPA bases its compliance feasibility analysis on a percent-of-revenue approach, which is not a reliable measure of these facilities' ability to meet compliance costs. EPA asserts that it does not use the cost-to-revenue approach to determine feasibility, but uses it as a "conservative screening measure to identify groups of units for which the Agency should evaluate the potential financial impacts."[13] If that is the case, then EPA has arbitrarily

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[11] Technical Support Document for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule): Final Notice of Action on the Reconsideration (March 2006) at 3, EPA-HQ-OAR-2004-0076-0224 (hereinafter "EPA TSD for FIP").

[12] 70 Fed. Reg. 25162, 25314 (May 12, 2005).

[13] EPA's Response to Significant Public Comments (March 2006), Rulemaking on Section 126 Petition from North Carolina to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program (70 FR 49708; August 24, 2005) at 172, EPA-HQ-OAR-2004-0076-0224.1.

failed to conduct that additional financial impact analysis for this discrete category of units that would be triggered by its screening measure. Although Colver does not agree with EPA's evaluation, EPA's estimated cost/revenue data for 2015 should have triggered additional inquiry by EPA, because 9 of 13 plants at this screening phase indicate a ratio >1%.[14] Only one plant according to EPA's estimates yielded a <1% ratio, therefore, based on EPA estimates, data for 12 of 13 plants should have been examined more closely. EPA adopted 1% as acceptable and >1% as unacceptable compliance cost-to-revenue ratios.[15]

Several features of the operations and financing of waste coal plants distinguish them from most other units in the egu source category. Because EPA is singling these small power producers out for elimination of their statutory exemption, a rational analysis would have to include assessment of unique obstacles faced by these sources, including:

• High-capital cost. Waste coal plants are high-capital-cost plants with very expensive CFB technology, which increases their debt service and operating costs. Thus, their operating margins are not comparable to margins typical of other industries or even of conventional utilities.

• Non-recourse financing. With non-recourse financing, the lender looks to the expected plant revenues and assets of the plant as collateral for the loan.[16] Thus, a facility is less able to absorb declining revenues and remain viable. This explains why, even using EPA's highly optimistic estimate of the opt-in cost for one source – a facility that would receive 88% of its needed allowances in the opt-in[17] -- the cost to purchase the 12% shortfall of its needed allowances is unacceptable as an unanticipated, unaccounted-for cost. Further, the cost is not fixed, but determined by a fluctuating market. This introduces uncertainties where none existed, where under present circumstances the Title IV exemption runs with the long-term PPA. This financing feature alone and considering what is at stake make broad-brush conclusions, standard assumptions and close approximations unacceptable and highly arbitrary.

• Power purchase agreement. Waste coal units are subject to long-term Power Purchase Agreements (PPA), which are fixed-price contracts that preclude passing increases in compliance costs to customers. These long-term contracts also fix revenue escalations; if revenues do not keep up with revenue escalations, further complicating financial management.

• Tax-exempt municipal bond financing. The plants are typically financed by municipal bonds. This heightens the need for accurate predictions of compliance feasibility; if incorrect they can cause real, direct harm. In Colver's case, bondholders tend to be

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[14] EPA TSD for FIP, Waste Coal-Fired Units, 4.

[15] Regulatory Impact Analysis for the Final Clean Air Interstate Rule (March 2005), 8-8.

[16] Under ordinary circumstances, the general credit of the parent utility provides the collateral for the loan.

[17] EPA TSD for FIP, Waste Coal-Fired Units, 5.

investment houses and brokerages that offer Pennsylvania Tax-Exempt Funds, the type of bonds purchased by many people to protect their retirement. In addition, the bonds are exempt from federal taxes under the Internal Revenue Code, because they were issued to finance a solid waste processing facility that burns waste.[18] Therefore, the financing prevents these units from switching fuels.

Several other factors make fuel switching not an option, including: (1) Boiler design. The CFB boilers are designed to burn the limited range of sulfur/Btu content of the waste coal at that site.[19] Outside that range, reducing fuel input results in reduced electric output, due to the reduced amount of heat available. (2) PPA requirements. Fuel switching affects electricity output, which may make it impossible for the plant to meet minimum output requirements of the PPA. (3) PURPA. QF status is predicated on burning waste, and the PPA is predicated on QF status.

Because waste coal plants do not operate under market conditions, the use of standard compliance cost formulas as applied to these sources is arbitrary. To accurately assess compliance cost impacts on these facilities, a measure other than percent of revenue should be used. By EPA's own data and explanation, additional analysis was called for but not conducted. Especially given the very small data set of 18 waste coal units at issue, which could be collected and analyzed with minimal effort, EPA's failure to conduct that inquiry was arbitrary. Had EPA sought additional data from the units, it could have appropriately adjusted its cost-to-revenue analysis with factors that would allow it to meaningfully assess the impact on these unique units and arrive at a rational threshold ratio for viability.

Given the narrow margins for these plants, EPA's methodology for calculating the ratio – its assumptions, the database, etc. – are critical to an accurate analysis of acceptable cost. Here, EPA projected allowance cost-to-revenue ratios based on all units within a State or region, not individual plants, and EPA included some but not all facilities (Colver was not accounted for) in the State or region.[20]

In addition, EPA adopts 1-4% as an acceptable ratio for waste coal plants without a complete data set and without any consideration of atypical elements of these plants that clearly demand further evaluation.

EPA's selection of a range of 1-4% ratio of cost-to-revenue as feasible for these sources is not supported by anything in the record and even contradicts other portions of the record.

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[18] 26 U.S.C. 142(a)(6); 26 C.F.R. §1.103-8(f)(2)(ii)(a)(2005).

[19] The boiler design determines the total amount of mass that the boiler can process at any given time. Introduction of lower-valued sulfur in the fuel could increase the amount of mass that the boiler would have to handle because limestone has a higher specific gravity than the bituminous fuel used by Colver, and to achieve the required capture rate of 95%, significantly more limestone must be added. Outside a limited range of sulfur content, plant efficiency is lost because the plant must then increase limestone feed and reduce fuel feed to ensure the removal rate required by the permit.

[20] EPA's CAIR SO2 Allocation Approach Analysis (March 2006).

EPA indicated that when analyzing cost-to-revenue impacts, this was its approach to analyzing acceptable ratios:

"EPA further assessed the economic and financial impacts of the rule using the ratio of compliance costs to the value of revenues from electricity generation, focusing in particular on entities for which this measure is greater than 1 percent. Although this metric is commonly used in EPA impact analyses, it makes the most sense when as a general matter an analysis is looking at small businesses that operate in competitive environments. However, small businesses in the electric power industry often operate in a price-regulated environment where they are able to recover expenses through rate increases. Given this, EPA considers the 1 percent measure in this case a crude measure of the price increases these small entities will be asking of rate commissions or making at publicly owned companies."

Of the 75 small entities considered in this analysis, and 264 total small entities in the CAIR region, 28 entities may experience compliance costs greater than 1 percent of generation revenues in 2010, while 46 may in 2015. Entities that experience negative net costs under CAIR are excluded from these totals. These results do not fully account for the reality that none of these entities operate in a competitive market and thus should be able to recover all of their costs of complying with CAIR. It should also be emphasized that under CAIR, states, through their choice of NOx allowance allocation methodologies, can potentially mitigate adverse affects of CAIR on small entities.[21]

In the case of Colver and waste coal small power producers, EPA's scenarios do not account for their operating structure. They neither sell power in a market not have the ability to pass costs on to ratepayers. Based on these representations concerning its analysis, EPA would need to fully consider impacts to waste coal sources, including the fact that they neither participate in a market nor operate under fixed price contracts.

In its SO2 compliance analysis, EPA also recognized that for some non-market participants, there would need to be some deviation from the standard used to assess compliance feasibility. In its unfunded mandates analysis, EPA noted that compliance costs >1% for government entities could have an unacceptable impact: "Government entities projected to experience compliance costs in excess of 1 percent of revenues have some potential for significant impact resulting from implementation of the CAIR.[22] However, EPA ultimately concluded that "because these government entities can pass on their costs of compliance to rate-payers, they will not be significantly impacted."[23] While waste coal units are clearly not government entities, they do operate under unusual limitations, and unlike government entities, cannot pass costs through to ratepayers. Careful analysis of the appropriate data from waste coal sources would reveal that the ratio EPA identified as feasible for egus is an inappropriate measure for this source category.

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[21] FN. EPA RIA, 8-8.

[22] EPA's CAIR SO2 Allocation Approach Analysis (March 2006).

[23] EPA's CAIR SO2 Allocation Approach Analysis (March 2006).

EPA has the legal obligation to justify its regulatory decisions with data, analysis and demonstrably rational decision-making. *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Insurance Co., 463 U.S. 29, 43 (1983).* It has not done this for this source category. Absent further data gathering and analysis, critical financial limitations of these units are wholly unaccounted for by EPA's percent-of-revenue approach, and EPA's reliance on that data for rulemaking decisions is arbitrary.

III. EPA RETAINED THE EXEMPTION FOR SOLID WASTE INCINERATORS BUT ELIMINATED THE EXEMPTION FOR WASTE COAL SOURCES, DESPITE THE FACT THAT EPA'S ANALYSIS APPLIES EQUALLY TO WASTE COAL SOURCES.

In its proposed rule, EPA effectively eliminated Title IV exemptions for several types of sources, among them solid waste incinerators (SWI) and small power producing waste coal plants. Representatives of both source types filed comments on the rule, challenging EPA's elimination of their exemption. In the final rule, EPA decided to retain the exemption for solid waste incinerators, based on a threshold "primary purpose" test and several other rationales. It announced this primary purpose test for the first time in the final rule, depriving similarly situated sources including Colver and other waste coal facilities of an opportunity to demonstrate under EPA's test, they would likewise be exempt. The threshold test and each of the other rationales applies with equal or greater force to waste coal plants, yet EPA came to the opposite conclusion with respect to those sources. EPA provides no reasoned analysis for reaching these opposite conclusions and makes incorrect assumptions or draws incorrect conclusions regarding waste coal sources, resulting in an arbitrary outcome.

Because EPA's test for resolving the elimination of the IPP exemption for the acid-rain-exempt sources was not known until publication of the final rule, Colver could not have pointed out the error in EPA's conclusions for consideration during the comment period.

A. EPA imposed in the final rule a "primary purpose" threshold as a test for a source to retain its statutory exemption and then applied denied its application to waste coal facilities.

In the CAIR FIP, EPA concluded that primary purpose of a SWI that produces power is to burn waste and therefore it should continue to be excluded from Title IV. EPA reasoned that SWIs were specifically developed to eliminate landfills,[24] and that because their primary purpose is to eliminate solid waste, not to generate electricity, Congress therefore did not intend SWIs to be covered under Title IV.

EPA used this primary purpose test, announced for the first time in the final rule, to reconcile its inconsistent treatment of SWIs and other acid-rain exempt sources. A review of the law and facts shows that EPA's primary purpose test applies equally to sources that burn coal waste. In spite of clear differences between the business practices

[24] 71 Fed. Reg. 25328, 25351 (April 28, 2006) (stating "solid waste incineration units are designed and operated for the purpose of disposing of solid waste").

of the two source types, they are both developed as a means to eliminate the environmental threat of waste without squandering the energy value of the waste stream. Through its many legislative enactments, Congress has provided many incentives for development of both these source types, which encourage the recovery of energy from waste.[25]

In 1965, Congress initiated a national program of research and development for new and improved methods of "proper and economic solid waste disposal."[26] In 1968, Congress formally supported as a national priority the need to eliminate the waste and its environmental threat, by creating a federal tax exemption for bond-financing of "solid waste disposal facilities."[27] The exemption has been renewed in every subsequent tax code revision.[28] The financing may be used by facilities for the collection, storage, treatment, utilization, process or final disposal of solid waste.[29] In 1970, Congress broadened the scope of its research on solid waste disposal to emphasize recovery of materials and energy from solid wastes.[30] In 1976, with the adoption of RCRA[31], Congress again broadened the federal government support focusing on emerging technologies for resource recovery.

In 1977, Congress responded forcefully to the national energy crisis, and adopted the Public Utilities Regulatory Policies Act.[32] Through PURPA, Congress emphasized the development of all possible energy sources in the nation – including waste energy – to help diversify the nation's energy sources. In PURPA, Congress explicitly created incentives for facilities that used waste as a primary fuel to create power. FERC implemented PURPA by identifying two categories of "qualifying facilities" (QF) whose energy production would be encouraged through preferential treatment: cogenerators and small power producers.[33] Relevant here are the requirements for small power producers. Burning solid waste was central to qualifying: "[t]he primary energy source of the facility must be biomass, waste, renewable resources, geothermal resources, or any combination thereof, and 75 percent or more of the total energy must be from these sources." 18 C.F.R. § 292.204(b). "Waste" includes specific listed "energy inputs" and any other energy input "that has little or no current commercial value and exists in the

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[25] "Resource recovery" is generally understood to mean "the recovery of material or energy from solid waste." SWDA § 1004, 42 U.S. C. § 6903.

[26] Solid Waste Disposal Act of 1965 (P.L. 89-272).

[27] Revenue Adjustment Act of 1968, P.L. No. 90-364.

[28] 26 U.S.C. 142(a)(6).

[29] 26 C.F.R. § 1.103-8(f)(2)(ii)(a)(2005).

[30] Resource Recovery Act of 1970 (P.L. 91-512, 84 Stat. 1227).

[31] P.L 94-580.

[32] PURPA was repealed by the Energy Policy Act of 2005 (P.L. 109-58), but existing contracts based on its provisions are unaffected.

[33] Facilities must meet qualifying facility criteria (18 C.F.R. § 292.207(a)) and fuel criteria (18 C.F.R. § 292.204(b)).

absence of the qualifying facility industry."[34] In other words, the waste stream must exist apart from the industry that seeks to extract its energy value.

Historically, federal support for addressing the nation's solid waste problems has paralleled federal attempts to meet the nation's short- and long-term energy needs. For almost 40 years, Congress has provided tax and regulatory incentives for all types of sources that recover energy from solid waste – SWIs and waste coal units alike under the same incentives structure – to address the dual goals of encouraging the elimination of waste and the efficient capture of energy produced by its combustion.

Other aspects of waste coal plants support the conclusion that waste recovery is central to their operation. But for the millions of pounds of waste coal with recoverable energy, Colver and other waste coal plants would not have been built. Often, the plants are built at the site of the waste coal; all are designed to burn a specific coal available at an identified gob site.[35] The financing is pursuant to Solid Waste Disposal Revenue Bonds issued by the Pennsylvania Economic Development Financing Authority (PEDFA).[36] These bonds are federally tax exempt but may be applied only to the financing of the waste remediation portion of the facility, not the energy production plant. The financing is directly tied to the estimated duration of the waste coal fuel at that site; the terms require annual certification that the fuel supply "readily available" to the facility at the gob sites is sufficient to permit the facility to operate for the remaining life of the contract.[37] The financing is conditioned further on the unit burning waste and thereby maintaining FERC QF status. The PPA is also directly linked to the waste. In addition, Colver must burn waste coal in order to comply with its Title V Air Permit.[38]

In addition to the federal tax exemption, Pennsylvania exempts waste coal plants from state personal income tax, personal property taxes and corporate net income, to further encourage this construction and operation. Thus, while the plant is indeed a small power production facility, Pennsylvania's primary motivation for foregoing tax revenue on the plants is directed to their waste disposal function, to improve blighted areas and reclaim them for productive use, eliminating a significant environmental threat.

EPA developed its primary purpose rationale for the final rule to explain why it retained the CAA exemption for some but not all Title-IV-exempt waste burning units. Colver would have been able to demonstrate to EPA during the comment period its strong commitment to waste elimination. Colver and other waste coal units would have been

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[34] 18 C.F.R. § 292.202.

[35] The mass loading, air balancing, and the impact of inconsistent qualities (moisture content, Btu content, ash percentage, and sulfur content) of the waste fuel dictate specific design factors for the boiler burning that fuel. That fuel varies from plant to plant and therefore boiler design also varies.

[36] See Attachment A, PEDFA Solid Waste Disposal Bond Issue regarding the financing of the Colver plant.

[37] See Attachment B, Power Purchase Agreement

[38] See Attachment C.

able to demonstrate that EPA should have consistently applied its test to waste coal facilities, where Congress and States have jointly provided incentives to such sources – like SWIs -- for the primary purpose of eliminating waste and potential harm to the environment.

B. EPA failed to adequately support its claim that regulation of waste coal-fired facilities is highly cost effective, and EPA failed to recognize that the emissions from waste coal-fired facilities represent a minute fraction of overall emissions.

EPA adapted "highly cost-effective controls" as the benchmark for setting SO2 emissions reduction obligations.[39] A key factor for identifying highly cost-effective controls is whether a source category is "emitting relatively large amounts of the relevant emissions." Waste coal-fired plants individually and as a category contribute a minute fraction of the relevant emissions.

Colver, a new, advanced-technology plant with low SO2 emissions due to its fuel source and technology, is cleaner than most coal-fired generation units. Under Phase I of the Acid Rain program, EPA was focused on bringing sources into compliance that had SO2 emissions rates >2.5 lb/mmBtu. In Phase II, in 2000, EPA provided allowances to sources based on an emission rate of 1.2 lbs/mmBtu multiplied by baseline fuel consumption. By contrast, in 2001 Colver was permitted for SO2 emissions at 0.6 lbs/mmBtu.

EPA concludes that the SWIs taken together emit low amounts of SO2. Nationwide in 2001, there were 97 municipal solid waste combustors with energy recovery with the capacity to burn up to 95,000 tons of MSW per day.[40] Municipal solid waste-fired generation in the US emits SO2 at an average rate of 0.8 lbs/MWh of SO2.[41]

EPA failed to conduct the same analysis for the waste coal sources. Nationwide, there are 18 waste coal plants. They all emit SO2 at very low amounts due to their permitting in the 1990's and investment in advanced technology. Had EPA analyzed the air emissions of this source category, it would have concluded that the waste coal sources also meet the test for very low emissions. This in turn would have affected the critical highly cost effective controls analysis.

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[39] Multiple other elements considered in the highly cost effective controls analysis should also be assessed, and there is no indication that EPA took these into consideration. For example, with the CFB and waste coal fuel, the economics of installing back-end technologies (such as FGD) are not viable compared to uncontrolled pulverized coal-fired units because of the inherent lower boiler (as opposed to plant) emissions.

[40] EPA 2001 data, at http://www.epa.gov/msw/facts.htm.

[41] EPA data at http://www.epa.gov/cleanenergy/muni.htm.

C. EPA improperly overrode the Congressional mandate that certain small power producers are exempt from Title IV.

Congress directly spoke to whether waste coal-fired facilities should be subject to the SO2 Title IV cap-and-trade program. Title IV and implementing regulations, 42 U.S.C. § 7651d(g)(5)(A), and 40 CFR § 72.6(b)(5), provide exemptions for certain small power producers. A small power producer is exempt if it is (1) a "qualifying small power production facility" under the Federal Power Act[42]; and (2) had executed a power purchase agreement as of November 15, 1990.[43]

In creating this exemption for small power production units, Congress recognized that these facilities were bound by contracts to provide power to specific customers at fixed prices, and had no ability to pass new compliance costs – for scrubbers/other controls, compliance certification, monitoring/reporting, purchase of allowances – on to customers.

In the FIP, EPA duly recognized Congress's granting an exemption for these small power producers from Title IV, but draws the conclusion "that this exemption was aimed at easing the transition of such facilities into the Acid Rain Program and that there is no basis for maintaining this exemption for every subsequent cap-and-trade program."[44] Yet EPA fails to acknowledge that when Congress granted the exemption, it based it on existing contractual obligations, some creating very long-term obligations. At the time these CAA provisions were being considered, Congress considered and decided not to impair these contracts. This was directly noted by Senator Wirth during consideration of the legislation: "Grandfathering these units is fair because the units are under contract or have accepted price bids."[45]

EPA now tries to force Title IV-exempt small power producers into Title IV through the back door. Under CAIR, EPA provides them no allowances. So EPA directs them to opt in to Title IV, and to its allowance program for opt-in units. Waste-coal small power producers are subject to a highly coordinated series of obligations, including a state power sales' agreement with severe penalties for breach of the terms of the contract (and ultimate ramifications for bondholders and the State of PA). Congress constructed a complex regulatory program for these sources and they relied on that structure to enter into long-term contracts. EPA cannot arbitrarily impair those contracts, especially where Congress already decided not to.

In determining the validity of an agency regulation, the first question is "whether Congress has directly spoken to the precise question at issue." *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984). Congress has directly spoken to how the waste coal-fired facilities should be regulated under EPA's Acid Rain

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[42] 16 U.S.C. 796 (17)(c).
[43] 42 U.S.C. § 7651d(g)(6)(A).
[44] 71 Fed. Reg. 25328, 25351 (April 28, 2006).
[45] 136 Cong. Rec. S3027, reprinted in Legislative History P.L. 101-549, Vol. 6.

program: they should be exempt due to existing contracts. The Agency lacks authority to enact regulations inconsistent with the congressional directive. By utilizing Title IV to implement the CAIR FIP, EPA attempts to accomplish through regulation what Congress decided not to do through legislation. EPA's failure to exempt waste coal units from CAIR FIP, implemented through Title IV, directly conflicts with congressional intent.

CONCLUSION

For all of the foregoing reasons, Colver Power respectfully requests that EPA grant the Petition for Reconsideration.

NEW ISSUE

In the opinion of Bond Counsel, under existing laws as enacted and construed on the date of initial delivery of the 1992A Bonds, interest on the 1992A Bonds is excluded from gross income for federal income tax purposes under the conditions and subject to the limitations discussed under "TAX EXEMPTION" herein. Interest on the 1992A Bonds is a specific preference item for purposes of the federal alternative minimum tax imposed on individuals and corporations. Interest paid to certain corporate holders of the 1992A Bonds may be subject to environmental tax and foreign branch profits tax under circumstances described under "TAX EXEMPTION" herein. Under the laws of the Commonwealth of Pennsylvania as enacted and construed on the date of initial delivery of the 1992A Bonds, interest on the 1992A Bonds and gain from the sale thereof are exempt from Pennsylvania personal income tax and corporate net income tax, and the 1992A Bonds are exempt from personal property taxes in Pennsylvania.

$145,000,000

Pennsylvania Economic Development Financing Authority

Solid Waste Disposal Revenue Bonds

(Inter-Power/AhlCon Partners Project) 1992 Series A

UPDATES℠/Unit Priced Demand Adjustable Tax Exempt Securities

Dated: Date of Delivery **Due: December 1, 2019**

The 1992A Bonds are being issued by the Authority pursuant to a Trust Indenture from the Authority to CoreStates Bank, N.A., as Trustee, for the purpose of financing a portion of the costs of acquiring, constructing and equipping an approximately 102 megawatt (net) bituminous waste-coal-fired small power production facility located in Cambria County, Pennsylvania. The principal and redemption price of and interest on the 1992A Bonds will be payable from, and secured by, money in certain funds and accounts established under the Indenture and payments assigned to the Trustee pursuant to a Loan Agreement between The Connecticut National Bank, not in its individual capacity, but solely in its capacity as Owner Trustee under the Trust Agreement described herein, and the Authority. In addition, the Owner Trustee is executing an Open-End Mortgage and Security Agreement to secure, in part, its payment under the Loan Agreement with respect to the 1992A Bonds. Simultaneously herewith the Authority is issuing its 1992B Bonds in the aggregate principal amount of $25,000,000 on a parity, as to payments under the Lease described herein, with the 1992A Bonds.

The 1992A Bonds will be issued initially in the Unit Pricing Mode in denominations of $100,000 or integral multiples of $5,000 in excess thereof. Interest on the 1992A Bonds in the Unit Pricing Mode is payable on each Purchase Date applicable thereto. Except as otherwise described herein, the 1992A Bonds shall be required to be surrendered at the designated office of Security Pacific National Trust Company (New York), the Paying Agent, for payments of principal, Purchase Price, redemption price and interest due thereon at maturity or tender for purchase. The 1992A Bonds are subject to conversion to or from one interest rate mode to another, as described herein.

Principal or redemption price of all 1992A Bonds in the Unit Pricing Mode and the Purchase Price of such 1992A Bonds upon tender for purchase will be payable at Security Pacific National Trust Company (New York) as paying agent, tender agent, registrar and authentication agent upon presentment and surrender of such 1992A Bonds. Interest on 1992A Bonds in the Unit Pricing Mode shall be paid on the applicable Interest Payment Date described herein by bank wire transfer of immediately available funds to an account specified by the registered Owners.

Payment of the principal and up to 37 days' accrued interest on the 1992A Bonds (calculated at 12% per annum) and the purchase price of the 1992A Bonds tendered (or deemed tendered) for purchase as described herein, also will initially be secured by an irrevocable, direct pay letter of credit issued by

Banque Paribas

The Letter of Credit will expire on June 30, 1996, subject to extension or termination as herein described. The 1992A Bonds secured by the Letter of Credit are subject to mandatory tender for purchase in the event the Letter of Credit terminates or expires and is not replaced by an Alternate Letter of Credit with no reduction in rating.

The 1992A Bonds will be subject to optional, optional extraordinary, special mandatory and mandatory redemption and mandatory purchase prior to maturity as described herein.

THE 1992A BONDS ARE LIMITED OBLIGATIONS OF THE AUTHORITY AND ARE PAYABLE SOLELY FROM THE SOURCES REFERRED TO THEREIN AND DESCRIBED HEREIN. NEITHER THE GENERAL CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH OF PENNSYLVANIA OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, ON AND INTEREST ON THE 1992A BONDS. THE 1992A BONDS SHALL NOT BE OR BE DEEMED TO BE AN OBLIGATION OF THE COMMONWEALTH OF PENNSYLVANIA OR ANY POLITICAL SUBDIVISION THEREOF. THE AUTHORITY HAS NO TAXING POWER.

Price: 100%

The 1992A Bonds are offered subject to prior sale, when, as and if issued and received by the Underwriters and subject to certain conditions including the issuance of an approving opinion of Ballard Spahr Andrews & Ingersoll, Philadelphia, Pennsylvania, Bond Counsel. Certain legal matters will be passed upon for Inter-Power/AhlCon Partners, L.P. by its special New York counsel, Chadbourne & Parke, New York, New York, and its Pennsylvania counsel, Buchanan Ingersoll, P.C., Pittsburgh, Pennsylvania; for Banque Paribas, by its special New York counsel, Simpson Thacher & Bartlett and by Banque Paribas' internal French counsel; and for the Underwriters by their counsel, Orrick, Herrington & Sutcliffe, New York, New York. It is expected that the 1992A Bonds will be delivered on or about December 31, 1992.

Merrill Lynch & Co.

RRZ Public Markets, Inc. **Lehman Brothers**

December 31, 1992

AGREEMENT

FOR THE SALE OF ENERGY

FROM THE INTER-POWER GENERATING PLANT

BETWEEN

INTER-POWER OF PENNSYLVANIA, INC.

AND

PENNSYLVANIA ELECTRIC COMPANY

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AGREEMENT
FOR THE SALE OF ELECTRIC ENERGY
FROM THE INTER-POWER GENERATING PLANT

THIS AGREEMENT, made and entered into this 17 day of November, 1988 by and between PENNSYLVANIA ELECTRIC COMPANY (hereinafter "Penelec" or "Company"), a public utility corporation organized and existing under the laws of the Commonwealth of Pennsylvania and INTER-POWER OF PENNSYLVANIA, INC. (hereinafter "IPP"), a Pennsylvania corporation (hereinafter sometimes referred to collectively as the "Parties", or individually as a "Party").

WITNESSETH:

WHEREAS, Penelec is a Pennsylvania public utility corporation engaged in the production, transmission and distribution of electric energy; and

WHEREAS, IPP is a corporation which has undertaken to acquire, construct, install and operate a certain waste-fired, electric generating installation in Barr Township, Cambria County, Pennsylvania (hereinafter "Facility"), which was certified by the Federal Energy Regulatory Commission ("FERC") at Docket No. QF-87-632-000 on November 25, 1987, as a qualifying small power producer, said certification shall be attached hereto as Appendix 1 and made a part hereof; and

WHEREAS, the Facility, also known as the Inter-Power Generating Plant, consists of one generating unit with a net installed capacity of approximately eighty thousand (80,000) kilowatts ("KW"); and

WHEREAS, IPP intends to utilize bituminous waste as the principal energy source for the Facility, and have the Facility available for the production and sale of electric energy on or about December 31, 1992; and

WHEREAS, IPP intends to construct, own, maintain and operate a certain 115 kilovolt ("KV") electric transmission line extending approximately fifteen (15) miles from the Facility to Penelec's Glory Substation in Indiana County, Pennsylvania ("Transmission Line"); and

WHEREAS, IPP desires to sell the electric energy produced by the Facility to Penelec and Penelec desires to purchase said electric energy under the terms and conditions outlined below; and

WHEREAS, IPP may from time to time require additional electric services in the form of supplementary power, maintenance power, interruptible maintenance power, backup power, and interruptible backup power, and Penelec desires to provide said services to IPP under the terms and conditions outlined below.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, the Parties, intending to be legally bound hereunder, hereby covenant, promise and agree as follows:

A. Public Utility Commission Approval and Term of Agreement

1. This AGREEMENT shall be in full force and effect, binding upon the Parties hereto, and enforceable in accordance with its terms, upon its execution by the Parties hereto and after the issuance of a valid, binding and final order of the Pennsylvania

Public Utility Commission ("PaPUC"), acceptable in form and substance to the Company in its reasonable and sole discretion, approving the recovery by Penelec from its customers of all costs and charges proposed to be paid to IPP for electric energy delivered to Penelec under this AGREEMENT. IPP shall advise Penelec of its acceptance or rejection of the aforesaid PaPUC Order within thirty (30) days of Penelec's written notification of the Company's acceptance of said order. In the event IPP does not provide Penelec with its written acceptance within thirty (30) days of Penelec's written acceptance, this AGREEMENT shall become null and void. The date on which Penelec receives written notification from IPP that the aforesaid PaPUC order is acceptable in form and substance to IPP shall be known as the "Effective Date" of this AGREEMENT. Penelec shall promptly advise IPP in writing of its acceptance or rejection of the PaPUC order specified above.

2. The term of this AGREEMENT shall be for a period of twenty-five (25) years commencing with the date the Facility is declared by IPP to be in commercial operation ("Commercial Operation Date"). For purposes of this AGREEMENT, the "date of initial delivery of electric energy" shall be the first date on which the Facility generates and delivers electric energy at the Delivery Point (as hereinafter defined) as measured by Penelec's electric meter. Unless otherwise specified herein, this AGREEMENT may not be extended, shortened or otherwise modified unless by mutual agreement of the Parties in writing.

3.(a) As promptly as practicable but in no event later than sixty (60) days following the Effective Date of this AGREEMENT, IPP shall provide the Company with detailed engineering, permitting, and construction schedules showing the critical path for the Facility. IPP shall promptly advise the Company thereafter in writing of any revisions, modifications or changes to such schedules.

(b) IPP shall furnish the company with quarterly written status reports describing the progress of the engineering, permitting, and construction of the Facility. Such reports shall include, in reasonably sufficient detail, explanations of any delays in meeting scheduled dates for commencement or completion of any listed engineering, permitting or construction item.

(c) In the event IPP has not (1) obtained all principal federal and state environmental permits and authorization to construct and operate the Facility and (2) issued a purchase order (or entered into a legally binding commitment) for the Facility's principal energy conversion device on or prior to the dates specified in the schedules initially submitted to the Company, as revised from time to time with the prior written consent of the Company, which consent shall not be unreasonably withheld or denied, IPP shall pay to the Company one-half the amount of liquidated damages as provided in Section Y, paragraph 2 hereof.

(d) In the event this AGREEMENT is not otherwise terminated and IPP pays to the Company the liquidated damage amount as provided in subparagraph (c) above, then within thirty (30) days after the end of the first billing month following the Commercial Operation Date, the Company shall credit IPP for amounts paid to the Company hereunder, or otherwise reimburse IPP, for the full amount of such liquidated damage payment but without interest thereon.

(e) Notwithstanding the foregoing, if this AGREEMENT should terminate, the Company shall be entitled to the full amount of any liquidated damages provided under Section Y hereof, less any amount previously paid to Penelec hereunder.

4. The Company shall have no obligation to purchase any electric energy from the Facility prior to September 1, 1992.

B. Sale to and Purchase by Penelec of Electric Energy

1. IPP agrees to sell and deliver and Penelec agrees to purchase and accept delivery of all electric energy made available from the Facility.

2. For purposes of this AGREEMENT, the "Delivery Point" or point of interconnection between the Company's electrical system and the Facility shall be located at the 115 KV bus on Penelec's Glory Substation located in Cambria, Pennsylvania as shown on the schematic diagram marked as Appendix 2, attached hereto and made a part hereof. The Parties acknowledge and understand that the precise location of the Delivery Point as hereinabove defined shall be dependent upon the exact location of the Transmission

Line. Penelec shall utilize its best efforts under the circumstances to prepare its electrical system to receive electric energy from the Facility when IPP makes such electric energy available for sale.

3. IPP shall interconnect the Facility with the Company's electrical system and the Company shall interconnect its electric system with the Facility at the Delivery Point upon the terms and conditions contained in this AGREEMENT. IPP shall operate the Facility in parallel with the Company's electrical system.

4. IPP shall construct, own, operate, and maintain the Transmission Line of 115 KV from the Facility to Penelec's Glory Road Substation in order to facilitate the direct electric connection between IPP and Penelec. IPP shall consult with Penelec prior to the commencement of construction of the Transmission Line in order to obtain Penelec's approval of the most desirable location of said electric line for the purpose of establishing the electrical interconnection. For purposes of this AGREEMENT, the Transmission Line shall be considered part of the electrical equipment, devices, appurtenant facilities and Facility which are owned and operated by IPP, and all duties and responsibilities imposed upon IPP under this AGREEMENT with respect to such equipment shall be equally applicable to the Transmission Line.

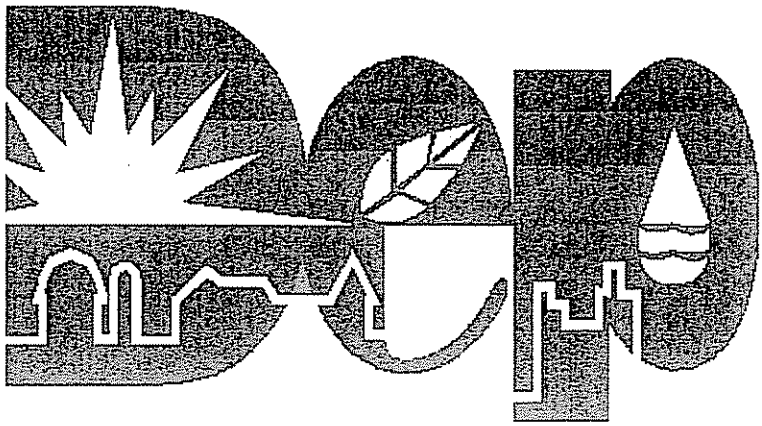
C. Pricing for Services and Incentive Payment

1. For purposes of this AGREEMENT, the term "PJM Billing Rate" shall be the monthly average of the hourly billing rates to the General Public Utilities Group ("GPU") for purchases by GPU

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Southwest Regional Office

Air Quality Program



TITLE V OPERATING PERMIT # 11-00378

INTER POWER AHLCON PARTNERS LP

Cambria Twp, Cambria County

Issued Date: 02/15/2001

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Note: These same sub-sections are repeated for each source!

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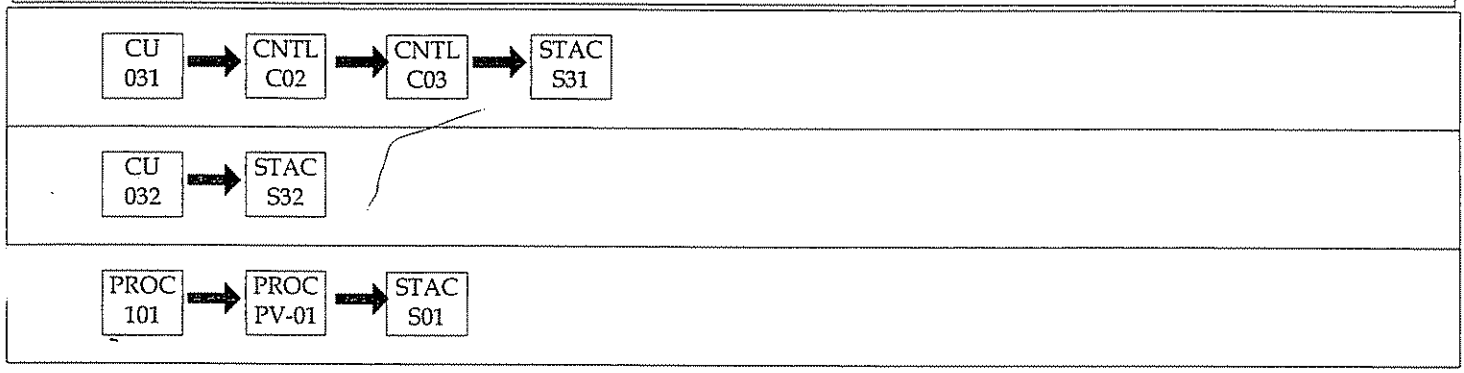
Section A. Site Inventory List

Source ID	Source Name	Capacity/Throughput	Fuel/Material
1	CIRCULATING FLUIDIZED BED BOILER	1,214.50 MMBTU/HR	
		84.00 Tons/HR	WASTE BITUMINOS
		4,666.00 Gal/HR	Propane
032	FUEL DRYER	28.00 MMBTU/HR	
		115.00 Gal/HR	Propane
101	FUEL HANDLING SOURCES	160.00 Tons/HR	REFUSE
DG-01	DIESEL GENERATOR		
FP-01	DIESEL FIRE PUMP		
PV-01	PROPANE VAPORIZER		
C02	CRUSHED LIMESTONE INJECTION		
C03	MAIN BAGHOUSE		
S01	DRIER STACK		
S31	MAIN STACK		
S32	DRYER STACK		

PERMIT MAPS



Section B. General Title V Requirements

#001 [25 Pa. Code § 121.1]

Definitions

Words and terms that are not otherwise defined in this permit shall have the meanings set forth in Section 3 of the Air Pollution Control Act (35 P.S. § 4003) and 25 Pa. Code § 121.1.

#002 [25 Pa. Code § 127.512(c)(4)]

Property Rights

This permit does not convey property rights of any sort, or any exclusive privileges.

#003 [25 Pa. Code § 127.446(a) and (c)]

Permit Expiration

This operating permit is issued for a fixed term of five (5) years and shall expire on the date specified on Page 1 of this permit. The terms and conditions of the expired permit shall automatically continue pending issuance of a new Title V permit, provided the permittee has submitted a timely and complete application and paid applicable fees required under 25 Pa. Code Chapter 127, Subchapter I and the Department is unable, through no fault of the permittee, to issue or deny a new permit before the expiration of the previous permit. An application is complete if it contains sufficient information to begin processing the application, has the applicable sections completed and has been signed by a responsible official.

#004 [25 Pa. Code §§ 127.412, 127.413, 127.414, 127.446(e) & 127.503]

Permit Renewal

(a) An application for the renewal of the Title V permit shall be submitted to the Department at least six (6) months, and not more than 18 months, before the expiration date of this permit. The renewal application is timely if a complete application is submitted to the Department's Regional Air Manager within the timeframe specified in this permit condition.

(b) The application for permit renewal shall include the current permit number, the appropriate permit renewal fee, a description of any permit revisions and off-permit changes that occurred during the permit term, and any applicable requirements that were promulgated and not incorporated into the permit during the permit term.

(c) The renewal application shall also include submission of proof that the local municipality and county, in which the facility is located, have been notified in accordance with 25 Pa. Code § 127.413. The application for renewal of the Title V permit shall also include submission of compliance review forms which have been used by the permittee to update information submitted in accordance with either 25 Pa. Code § 127.412(b) or § 127.412(j).

(d) The permittee, upon becoming aware that any relevant facts were omitted or incorrect information was submitted in the permit application, shall submit such supplementary facts or corrected information during the permit renewal process. The permittee shall also provide additional information as necessary to address any requirements that become applicable to the source after the date a complete renewal application was submitted but prior to release of a draft permit.

#005 [25 Pa. Code §§ 127.450(a)(4) & 127.464(a)]

Transfer of Ownership or Operational Control

(a) In accordance with 25 Pa. Code § 127.450(a)(4), a change in ownership or operational control of the source shall be treated as an administrative amendment if:

(1) The Department determines that no other change in the permit is necessary;

(2) A written agreement has been submitted to the Department identifying the specific date of the transfer of permit responsibility, coverage and liability between the current and the new permittee; and,

(3) A compliance review form has been submitted to the Department and the permit transfer has been approved by the Department.

(b) In accordance with 25 Pa. Code § 127.464(a), this permit may not be transferred to another person except in cases of transfer-of-ownership which are documented and approved to the satisfaction of the Department.

#006 [25 Pa. Code § 127.513, 35 P.S. § 4008 and § 114 of the CAA]

Inspection and Entry

(a) Upon presentation of credentials and other documents as may be required by law for inspection and entry purposes, the permittee shall allow the Department of Environmental Protection or authorized representatives of the Department to perform the following:

(1) Enter at reasonable times upon the permittee's premises where a Title V source is located or emissions related activity is conducted, or where records are kept under the conditions of this permit;

(2) Have access to and copy or remove, at reasonable times, records that are kept under the conditions of this permit;

(3) Inspect at reasonable times, facilities, equipment including monitoring and air pollution control equipment, practices, or operations regulated or required under this permit;

(4) Sample or monitor, at reasonable times, substances or parameters, for the purpose of assuring compliance with the permit or applicable requirements as authorized by the Clean Air Act, the Air Pollution Control Act, or the regulations promulgated under the Acts.

(b) Pursuant to 35 P.S. § 4008, no person shall hinder, obstruct, prevent or interfere with the Department or its personnel in the performance of any duty authorized under the Air Pollution Control Act.

(c) Nothing in this permit condition shall limit the ability of the EPA to inspect or enter the premises of the permittee in accordance with Section 114 or other applicable provisions of the Clean Air Act.

#007 [25 Pa. Code §§ 127.25, 127.444, & 127.512(c)(1)]

Compliance Requirements

(a) The permittee shall comply with the conditions of this permit. Noncompliance with this permit constitutes a violation of the Clean Air Act and the Air Pollution Control Act and is grounds for one (1) or more of the following:

(1) Enforcement action

(2) Permit termination, revocation and reissuance or modification

(3) Denial of a permit renewal application

(b) A person may not cause or permit the operation of a source, which is subject to 25 Pa. Code Article III, unless the source(s) and air cleaning devices identified in the application for the plan approval and operating permit and the plan approval issued to the source are operated and maintained in accordance with specifications in the applications and the conditions in the plan approval and operating permit issued by the Department. A person may not cause or permit the operation of an air contamination source subject to 25 Pa. Code Chapter 127 in a manner inconsistent with good operating practices.

(c) For purposes of Sub-condition (b) of this permit condition, the specifications in applications for plan approvals and operating permits are the physical configurations and engineering design details which the Department determines are essential for the permittee's compliance with the applicable requirements in this Title V permit. Nothing in this sub-condition shall be construed to create an independent affirmative duty upon the permittee to obtain a predetermination from the Department for physical configuration or engineering design detail changes made by the permittee.

#008 [25 Pa. Code § 127.512(c)(2)]

Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

#009 [25 Pa. Code §§ 127.411(d) & 127.512(c)(5)]

Duty to Provide Information

(a) The permittee shall furnish to the Department, within a reasonable time, information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to