

## Summary of Comments of FirstEnergy Generation Corp.

### Proposed Rulemaking Chapter 92a National Pollutant Discharge Elimination System (NPDES) Permitting, Monitoring, and Compliance

FirstEnergy supports the Department's efforts to reorganize the existing NPDES regulations to be consistent with the companion Federal regulations in 40 CFR Part 122. However, in reviewing the proposed rulemaking, FirstEnergy has identified several sections that require clarification and reconsideration relative to compliance with these regulations.

#### 1. Confidentiality of Information

As written, it appears that if the Administrator decides that given information is not eligible for protection, it will be made available to the public immediately. FirstEnergy asks that a permittee be given the right to appeal, if the Administrator does not concur that information provided by the permittee is confidential.

#### 2. Treatment Requirements

The identification of the presence or critical habitat of endangered or threatened species in waters of the US does not require any public notice. Imposition of discharge limits to protect endangered species with inadequate warning may require costly equipment and process modifications without the benefit of a cost benefit analysis. FirstEnergy suggests that PADEP include the words, "Prior to the issuance of a new permit or permit renewal," at the beginning of this section. The permit process would then allow the permittee to develop a reasonable, mutually agreeable compliance schedule to conform with the limited discharges.

#### 3. Application for a Permit – Additional Information

The examples of additional information that may be requested by the Department to support a permit application in many instances will require advance planning and budgeting. FirstEnergy requests that the same procedure of negotiating a reasonable compliance schedule for changes in water quality standards, effluent limitations, or other standards and treatment requirements be applicable to the category of additional information.

#### 4. Cooling Water Intakes

In attempting to keep the PA regulations current with the federal regulations, PADEP has addressed the USEPA 316(b) Rule both in this section and in the addition of terms, such as entrainment and impingement to the definitions in this chapter. Unless the effective dates of the Federal 316 (b) rule for existing facilities and the PA Chapter 92a regulations coincide, it appears that permit writers may require permittees to select and install treatment for reducing impingement mortality and/or entrainment prior to the issuance of the revised federal language for the 316(b) rule for existing facilities. FirstEnergy requests clarification on this point.

#### 5. TSS and BOD Limits

FirstEnergy believes that where a federal ELG already specifies a concentration-based limit for TSS/BOD, that federal limit should prevail.

#### 6. Variances

FirstEnergy proposes that this section be deleted because its intent is included in §92a.3. (c).