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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

NOV - 4 2008

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First St., N.E., Room 1A
Washington, DC 20426

RE: Comments on Draft General Conformity Determination for
Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC
Docket Nos. CP07-62-000, CP07-63-000

Dear Ms. Bose:

Thank you for the opportunity to comment on the draft general conformity determination for Maryland and Pennsylvania for the Sparrows Point LNG Terminal and Pipeline Project, dated September 2008. The U. S. Environmental Protection Agency (EPA) has reviewed this document for compliance with the general conformity provisions of 40 CFR Part 51, Subpart W and 40 CFR Part 93, Subpart B, and appreciates the care with which you have incorporated the provisions of 40 CFR Part 96 into your Agency's draft general conformity determination.

EPA's comments on the draft general conformity determination are provided in the enclosure to this letter. These comments include concerns regarding use of offsets outside an identified nonattainment area where general conformity is determined to be applicable for a criteria pollutant or precursor under the applicability test set forth in 40 CFR §93.153. EPA raised some of these concerns in several conference calls with AES consultants held in September and October of 2008. Where possible, I have identified the section and page number of the draft conformity determination to which the comment relates.

If members of your staff have any questions or wish to discuss any of the comments, they may contact me or Brian Rehn of my staff, at (215) 814-2176.

Sincerely,

Judith M. Katz, Director
Air Protection Division

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Enclosure



Enclosure 1 - EPA Region III Comments on Draft General Conformity Determination for Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC (Docket Nos. CP07-62-000, CP07-63-000)

1) Section 5.0 Applicability – The draft general conformity analysis is based upon designations/classification under the 8-hour ozone and PM2.5 annual NAAQS. However, on page 14, there is a statement that the 8-hour ozone attainment demonstration is awaiting EPA approval, and the general conformity analysis is based on the SIPs developed for the 1-hour ozone standard currently in place. It should be noted that the 1-hour ozone standard has been revoked, although the maintenance plans and attainment demonstrations remain in place.

The explanation in the document is confusing in respect to why 8-hour ozone classifications are used for determination of applicability for conformity determination (with respect to annual pollutant emissions) under 40 CFR § 93.153 contrasted with the statement cited above referencing the 1-hour ozone standard SIPs. Additional discussion of this unique case would serve to avoid confusion.

2) Table 6.1 Control Measures in Maryland Ozone and PM2.5 Nonattainment Areas, (page 14-15) – The National Low Emission Vehicle Program (or National LEV) is listed as a SIP measure in this table. While National LEV is still codified as an element of Maryland's SIP, the underlying regulation has since expired and been replaced with the Federal Tier 2 motor vehicle standards under the Federal Motor Vehicle Control Program. Since then, Maryland has adopted California's LEV program, which it submitted to EPA for SIP approval in early 2008. However, EPA has not yet taken rulemaking action on that SIP revision. This regulation is limited to passenger vehicles, so its impact should be on delivery and commuter vehicles rather than on construction equipment.

3) Section 6.1, (page 15-16) – This section indicates that “AES would commit to include” listed contingency measures for the construction and operating phase mitigation, and that “AES is continuing to evaluation further mitigation options that have not been reflected in the updated calculations.” EPA believes that there should be certainty with regard to the mitigation measures needed, and the contingency measures listed in this plan. Will these specific measures, their quantified mitigation benefits, and the certainty of their selection remain unknown until the release of the final version of the general conformity determination?

4) Section 6.2 Maryland Emission Budget and Project Emission Offsets, (page 17) – While it is true that Pennsylvania and Maryland have a reciprocity agreement which permits interstate trades between the two states, such an agreement does not automatically grant blanket approval to such interstate trades.



5) Section 6.2 (page 17) -- The statement that emission reduction credits (ERCs) may be traded within the same nonattainment area even though the area may span both MD and PA is not always true. A modeling analysis would need to be performed in some situations, such as the example case of the use of NO_x ERCs generated in Pennsylvania to offset NO_x emissions in Cecil County, MD. EPA would be interested in reviewing such modeling prior to the final general conformity determination.

6) Section 6.2 (page 17) -- The draft report states that it may be appropriate to use ERCs from the Philadelphia ozone nonattainment area to offset emission increases in the Baltimore ozone non-attainment area. According to the information presented in support of the Baltimore ozone attainment demonstration submitted to EPA, [Appendix G (8-Hour Contributions to Each Nonattainment County in 2010) of the document entitled "Technical Support Document for the Final Clean Air Interstate Rule Air Quality Modeling Analyses March 2005"] NO_x emissions from the entire Commonwealth of Pennsylvania contribute only 6-7 percent of the total ozone in the Baltimore area. Also, this document indicates that the Philadelphia nonattainment area is downwind of the Baltimore nonattainment area during most elevated ozone events. Therefore, use of NO_x and/or VOC ERCs from the Philadelphia nonattainment area would seem to have relatively minor impact on the mitigation of ozone impacts from new emissions in the Baltimore area, and may not be appropriate for satisfying general conformity for the criteria pollutant ozone. If NO_x ERCs are not available in the Baltimore ozone nonattainment area, it would likely be more appropriate to try and procure them from upwind locations. Further modeling analysis may be necessary to support their use for as PM_{2.5} precursors for mitigation that pollutant.

The substitution of VOC ERCs for NO_x ERCs may be appropriate if it can be demonstrated that ozone air quality in the Baltimore area is improved by reducing VOC emissions.

7) Section 6.2 (page 17) -- Regarding the use of Philadelphia nonattainment area ERCs to offset emissions in the Baltimore area, EPA's recent discussions with the Pennsylvania Department of Environment Protection (PADEP) regarding interstate trades showed that, historically, VOC emissions were predominately transferred from generating sources in Maryland to Pennsylvania, and not vice versa. In only one instance did PA DEP show a VOC trade between an emissions source in Pennsylvania for use in Maryland. PADEP indicated no instances of NO_x ERC trades trade between Maryland and Pennsylvania. EPA recommends that further discussions with PADEP and the Maryland Department of Environment (MDE) be held to confirm or update the history of ERC interstate trades between PADEP and MDE.

8) Section 6.2 (page 17) -- We are confused about the listing of approximately 175 tons of NO_x ERCs needed to mitigate the operating phase of the project mentioned in Section 6.2. Table 6.2 of the draft conformity determination lists annual project emissions for the Baltimore area (without power plant) of 114.6 tons of NO_x in year 2012 and 171.9 tons in year 2013 and later



(presumably from combined partial operation and ongoing construction). The format for separately presenting the annual project emissions (with and without mitigation) in separate tables may lead to some confusion with respect to the final results. Perhaps this information could be summarized in a clearer way to limit the potential for confusion.

9) Further explanation of the results presented in Tables 6.2-6.5 might also help the general public better understand your conclusions presented in Section 6.2 of the draft conformity determination. Some of the tabular data is presented with little or insufficient explanation of not just how the levels were determined, but what the results actually mean. Further explanation of the results is warranted in some cases. Perhaps a summary by nonattainment area of the data presented in each table might be more useful to those concerned about compliance with general conformity requirements for a particular nonattainment area. Again, more detailed explanation of the tabular results and conclusions would be helpful. For instance, why are annual project NOx emissions for Baltimore (and other areas) the same with and without inclusion of the power plant (Table 6.2 vs. Table 6.4)?

10) Section 6.2 (page 26) -- The 1.3-to-1.0 ratio of VOC to NOx, for purposes of substitution, was allowed several years ago in a separate plan (not a general conformity determination). In that instance, VOC ERCs from Quebecor Printing and General Motors in Maryland were transferred to the Naval Surface Warfare Center in Philadelphia. As we have discussed on our recent conference calls with AES, use of the 1.3-to-1.0 ratio for purposes of general conformity at this later date warrants further discussion between the relevant state agencies and EPA.

11) Section 6.2, Table 6.6 -- EPA is concerned about the magnitude of the needed ozone and PM2.5 precursor NOx offsets identified as necessary in the Maryland portion of the determination (Table 6.6), where specific offset measures have not yet been identified to close the needed shortfall. This is of particular concern in the project construction years of 2009 and 2010. A general commitment by AES to secure reductions from additional mitigation and from offsets side and outside the nonattainment areas for this magnitude of emissions offsets is of considerable concern. EPA is concerned about the availability of this magnitude of offsets in this timeframe, (in both the respective Baltimore and Philadelphia AQCRs where large amounts of reduction are still needed) and also the ability to reasonably add additional measures before the final general conformity determination (and within the very near term construction periods where large offsets are needed). Please refer to our earlier comments concerning the use of offsets from downwind nonattainment areas and from VOC for NOx substitution.

We recommend the addition of a table or other summary listing all identified offset measures, and their associated emission reductions, directly compared to the total needed annual ozone and PM2.5 NOx precursor reductions. Measures identified, but not yet in place or whose emissions have not yet been estimated could be listed and perhaps given a placeholder or rough estimate of



associated emissions reductions. The remaining offset shortfall could also be listed in such a table to show the amount committed by AES to be obtained in the future.

Perhaps MDE and PADEP could provide a list of available NO_x emissions offsets (and VOC offsets if NO_x to VOC trading is being pursued) from both the Baltimore and Philadelphia Air Quality Control Regions (AQCRs). Inclusion of such a list would show if AES's commitment to pursue offsets from either area to make up the shortfall is reasonable and possible.

12) Section 6.2 (page 15) – We support AES's evaluation of potential mitigation alternatives for tug boats, such as selective catalytic reduction (SCR) and diesel particulate filters (DPFs). There are other potential alternatives that are not listed that AES may wish to consider, such as plug-in type shore power for the tug boats or alternative power units (APUs) for select function, use of additional measures for reducing emissions from support equipment/vehicles, etc. Examples of innovative projects are already in place in projects and sites across the Mid-Atlantic region. For example, shore power facilities are already being used by the Port of Baltimore.

13) Section 6.2 (page 16) – The draft general conformity determination states that LNG ships will use 1.5% (15,000 ppm) sulfur fuel. In California, ships are using 0.2% (2,000 ppm) sulfur. AES may wish to evaluate the possibility of securing this lower-sulfur fuel for use as a mitigation or contingency measure.

14) Section 7.1 Consistency with Relevant Pennsylvania SIP Requirements (page 30) – The National LEV program listed as a federal rule in Table 7.1 for Pennsylvania has expired, although the regulation remains in the SIP. While National LEV is still codified as an element of Pennsylvania's SIP, the underlying regulation has since expired and been replaced with the Federal Tier 2 motor vehicle standards under the Federal Motor Vehicle Control Program. Pennsylvania has since adopted California's LEV program, and that program is now in effect and has been submitted to EPA for SIP approval (although EPA has not yet acted on that submittal). This regulation is limited to passenger vehicles, so its impact should be on delivery and commuter vehicles rather than on construction equipment.

15) Section 7.2 Pennsylvania Emission Budget and Project Emission Offsets (page 33) – The draft determination indicates that total direct and indirect emissions from the portion of the project in Chester County, Pennsylvania would not exceed the emissions budgets specified in the applicable SIP (which although not stated in this section, seems to be the 1-hr ozone attainment demonstration). It would be helpful to include a table or other listing in this section showing the emission budget from the applicable SIP, the allowable margin for project emissions, and actual expected emissions increase expected under the project in Chester County during the same period. This would quantitatively demonstrate the conclusion presented in this section.

