

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**Distributed Generation Rule Making
Project**

**COMMENTS OF CONSUMER POWER ADVOCATES (CPA)
IN OPPOSITION TO THE DEC'S PROPOSED CHANGES TO ITS
RULEMAKING PERTAINING TO THE USE OF DISTRIBUTED AND
EMERGENCY GENERATION IN EMERGENCY DEMAND RESPONSE
PROGRAMS**

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PRELIMINARY STATEMENT

Consumer Power Advocates (CPA), an association of non-profit commercial energy users in the Consolidated Edison Company of New York, Inc.'s service territory (Con Edison), respectfully submits these Comments in opposition to the New York State Department of Environmental Conservation's proposed rulemaking pertaining to the use of Distributed and Emergency Generation in Emergency Demand Response Programs

In calendar year 2001, the Department of Environmental Conservation decided that sources participating in the Emergency Demand Response Program ("EDRP") would be exempt from permitting. An emergency rule making was implemented which involved changes to Parts 200 and 201 and Subpart 227-2. During the summer of 2001, the New York Independent System Operator ("NYISO") successfully deployed its EDRP during three consecutive days in which the New York State electricity demand reached all-time peak consumption record highs¹. The deployment of EDRP was widely considered to be the critical support factor in preventing widespread power outages. The participation of Emergency and Distributed Generators in the program made a significant contribution and would not have been possible without the emergency rulemaking by the DEC.

The provisions to the Emergency Rule expired on January 31, 2002. In calendar year 2002, facilities, which wanted to participate in the program, particularly in New York City, were required to obtain either new or modified, permits. Many facilities with Emergency Generation who had made noteworthy contributions to the reliability of the electric grid through EDRP participation were forced to de-enroll from the program, expressing concern that their facilities would now be subject to new source reviews of existing Title V permits.

The Consumer Power Advocates strongly support the reinstatement of the emergency rulemaking of 2001, allowing for the use of Emergency and Distributed Generation in EDRP and acknowledging that the program is crucial to maintaining the reliability of the capacity-starved New York electricity market, until such time that new Central Station generation is brought on line.

¹ On Tuesday, August 7th electricity demand rose to 30,509MW between 2:00pm and 3:00pm. On Wednesday, August 8th, demand rose to 30,665MW between 3:00pm and 4:00pm. On Thursday, August 9th electricity demand rose to 30,983MW for the period from 2:00pm until 3:00pm. Prior to this week in 2001, the highest recorded peak occurred on July 6, 1999 when electricity demand rose to 30,311MW – Source: The New York Independent System Operator

SUMMARY OF POSITION

Last summer, the DEC expedited customers to participate in summer incentive programs by relaxing Title V permitting standards. Title V seeks to ensure that, under normal conditions, generators meet certain environmental requirements. Emergency incentive programs (EDRP) compensate participants who reduce load, either through the use of emergency generation or electric load curtailment when called upon by the NYISO. New York State DEC guidelines are unclear as to the allowance of emergency generators if there is a power shortage emergency and are equally unclear to the definition of “emergency”. An August 11, 2000 an Office of Air and Radiation letter addressed to the CEO of the California ISO clarified the EPA’s position that backup generators “used to avert a power blackout also be considered emergency generators provided that a power shortage emergency exists”. This clarification, in our opinion, opens the door to a discussion on how New York may better manage the continuing power crisis it faces this summer.²

Many of the Title V permitted institutions represented by CPA are willing to participate in these programs, but have expressed concern that by doing so they may place their facilities under the same scrutiny and standards as apply to new generation projects. The concern is that, in effect, they will be subject to a new source review if they apply for emergency incentive program benefits. Any additional scrutiny placed upon emergency generation represents a barrier to incentive program participation and is counter to the intent to provide additional power system reliability. Despite recent press to the contrary, the recession economy and resulting impact on demand have not fundamentally changed New York State’s need for additional power generation and emergency measures are still the first line of defense against a power blackout. We strongly wish to urge the Department of Environmental Conservation to closely examine the precarious nature of the electricity capacity shortage in New York State when evaluating the allowance of distributed and emergency generation in EDRP. In addition, we would like to highlight the differences between the relaxation of certain emissions standards for large central power plants and small customer owned distributed generation units. New York City is a primary area of concern, considered a “load pocket” and desperately

² Note: the EPA letter revises Federal guidance operating criteria for emergency generators but does not address State and local permitting requirements).

capacity short. When statewide curtailments are called, New York City relies more on the response of individual customers, such as those represented by the Consumer Power Advocates to respond in order to avert Citywide and Statewide outages.

While it is true that the Emergency Demand Response Program does provide financial incentives for load reductions, it should be noted that payments are nominal. No participant is motivated to perform strictly for the monetary payment, but rather out of a sense of community support and overall public good.

COMMENTS

I. System Reliability

The New York Independent System Operator has released two significant studies concerning the imminent need for more power in New York State the first of which was published on March 15, 2001 entitled “Power Alert” and the second which was published March 27th, 2002 under the header, “New York’s Persisting Energy Crisis”.

Upon the release of “Power Alert”, the NYISO concluded that New York State should approve and build 8,600 megawatts of new electric generating supply by 2005 in order to avoid impending shortages, improve competition, lower prices, and improve the environment. Since the issue of the first “Power Alert”, the NYISO has re-examined their findings and modified forecasts with concern to New York’s power supply taking into account the developments of the past year, including the loss of the World Trade Center on September 11, 2001.

The re-examination of the State’s power needs yielded that the loss of the World Trade Center and adjacent buildings resulted in a loss of about 140 megawatts of summer peak load, but a permanent loss of only 90 megawatts in New York City. Early reports had estimated a much higher loss of demand than what was actually realized.

The NYISO also concluded that despite the downturn in the economy and the after effects of September 11th, New York State will still require additional electric capacity of 7,100 megawatts by 2005. Of the total 7,100 megawatts needed, approximately 2,000 to 3,000 megawatts must be located in New York City.

On July 23, 2002 New York City Mayor Mike Bloomberg issued a statement criticizing state

leaders from discouraging utilities from building plants in the state and highlighting the ongoing capacity shortage crisis. Bloomberg stated, “We do not have enough power generation or distribution facilities and it is very difficult to site and build those facilities. But if we don’t address those problems now we are going to find ourselves down the road with more blackouts and shortages.”³

State regulators have approved three new power plant projects in New York City that would provide 1,450 additional megawatts of electrical power by year-end, 2005. However, experts do not expect any major source of electricity to come online in NYC until 2004, at the earliest.

II. Emergency Demand Response Programs

Until such time that new generation is brought on-line, emergency demand response programs such as EDRP are absolutely essential in order to maintain a reliable power system. In preparing the “Power Alert II” publication, the NYISO examined operation of New York’s electric system during the week of August 6-10, 2001 when a major heat wave struck the Northeast, causing record-setting demand for electric power both in New York and in neighboring systems.

The events of that week tested the power systems and the market’s ability to maintain a reliable supply of energy – especially when power reserves remained dangerously close to minimum levels. The NYISO firmly established that effective demand response programs played a critical role in the prevention of blackouts.

The utilization of emergency generation during the EDRP events of 2001 were made possible by an emergency rule making involving changes to Parts 200 and 201 and Subpart 227-2 by the Department of Environmental Conservation. The contribution made to overall electric load reduction by using emergency generators was one of the key factors to the success of EDRP in New York. William J. Museler, President and CEO of the NYISO issued a press release on August 9th, 2001 stating that, “We have already received very positive feedback from participants who say they believe this is the best program of its kind in the nation. What we do know is that it worked precisely as it should have during a critical period.”

³ Source: “Bloomberg calls for more power plants” – Greenwire – July 23, 2002

Overall, the NYISO estimated that the combination of conservation efforts used in tandem with the utilization of emergency generation under the DEC emergency rule resulted in over 1,000 megawatts in reduced demand during these extreme conditions.

On August 10th, 2001 Museler issued a second press release claiming, “As fortunate as we were this time around, the increase in peak demand of 672 megawatts over just two years underscores the critical need for us to get new generating plants sited and make improvements to our transmission system. If we don’t respond to these warning signs, then even the heroic efforts we saw this week might not be enough.”

III. Rules for Emergency Generation to Participate in EDRP

The provisions to the DEC Emergency Rule, which had allowed those facilities with emergency generation participate in EDRP with a great deal of success, expired on January 31, 2002. Because the emergency rule was not reinstated, many of the EDRP participants who relied mainly on the use of emergency generation in order to achieve load reduction, de-enrolled from the program. The de-enrollment of these sources has significantly reduced the available pool of committed demand reduction during a time when most energy professionals agree New York – and particularly Downstate – is still facing a dire energy crisis.

The position papers prepared by the DEC, dated November 19, 2002, do not make clear the future direction of the agency in establishing clear rules for the participation of emergency generators in the Emergency Demand Response Program. Emergency Generators are currently exempt from permitting and are defined at 6 NYCRR 201-3.2(c)(6): *“Emergency power generating units installed for use when the usual sources of heat, power, water, and lighting are temporarily unobtainable, or which are installed to provide power to fire fighting equipment, where each individual unit operates less than 500 hours per year, and excluding those units under contract with a utility to provide peak shaving generation to the grid.”*

Because the DEC has interpreted the participation in EDRP as “peak shaving”, the use of emergency generation sources is not permitted under the current exempt status. The DEC position paper goes on to state that, “This is because units operating under the EDRP would be operating during critical peak demand periods during which the facility still could obtain power from the grid which is

not covered under the definition of emergency generators.”

The Emergency Demand Response Program was specifically designed to be activated in order to prevent utility outages or blackouts, therefore the call to curtail or go to an alternative power source will always be made during periods when a facility may still obtain power from the grid. Because EDRP is activated, blackouts and outages are avoided. The DEC definition of emergency generation and peak shaving as well as the expiration of the emergency rule of 2001 makes the possibility of an outage in 2003 more likely due to the massive de-enrollment from the program from those participants who relied on emergency generation to reduce load.

Thus, a Catch-22 situation exists for facilities, able to participate in EDRP, and who did contribute to mitigating possibly precarious demand on the NYC electricity grid during the record-setting peak in August 2001. Under the current regulations, a blackout must first occur before an emergency generator may be used and maintain exempt status. A much more desirable scenario would be to make possible the avoidance from blackouts by allowing the use (albeit limited) of emergency generation in the EDRP.

CONCLUSION

Given the continued power crisis in New York, and specifically New York City, the Department of Environmental Conservation should take the following options under consideration in order to allow emergency generators to participate in EDRP. By allowing and even encouraging the use of currently exempt emergency generation to reduce load on the system during periods of dangerously high peak demand, the DEC would be assisting to reduce the potential of power interruptions which would surely result in uncontrolled emissions from these same generators.

New York State currently leads the nation in efforts to provide clean air for its residents and control air pollution, and for this the Department of Environmental Conservation should clearly be lauded. However, the state also faces a hazardous energy shortage requiring all state agencies to work together in order to implement solutions. We are confident that the DEC can help to address the State’s energy needs while simultaneously ensuring that human health and the environment are also protected.

RECOMMENDATIONS

- **Reinstate The Emergency Rule of 2001:** Pursuant to the NYSDEC's current versions of Parts 200 and 201 and Subpart 227-2, emergency generators registered and used to curtail electricity demand on the grid during EDRP events are not exempt.⁴ The reasoning behind this is the definition of emergency generators does not allow for events just prior to blackouts or utility outages but rather, only afterwards. The allowance of emergency generation in EDRP by the DEC can play a significant role in the prevention of blackouts. This issue was addressed successfully in May 2001 with the emergency rule making and our primary recommendation to the NYSDEC is to reinstate this emergency rule making until such time that the threat of blackouts and utility outages is mitigated through other measures.
- **Draft and Publish Clear Guidelines:** The Department of Environmental Conservation must carefully examine all areas of this issue inclusive of the public danger faced by widespread power outages and the overall value of the Emergency Demand Response Program in mitigating this risk prior to drafting and issuing any new guidelines which will surely affect consumer participation in these programs. We strongly suggest that the DEC issue any new rules at least sixty days prior to the beginning of the summer cooling season, when the danger of power blackouts is most imminent. In addition, we request the DEC draft the language in the plain, clear terms, so that any lack of understanding of the rules does not also inhibit the program participation.

The Consumer Power Advocates thank the Department of Environmental Conservation for the opportunity to submit the enclosed comments.

Dated: January 15, 2003
Avon By-The-Sea, New Jersey

Respectfully submitted,

Luthin Associates, Inc., representing:
Consumer Power Advocates

⁴ Non-exempt status pertains to engines with ratings equal to or greater than 225 hp in severe ozone non-attainment areas.

The Consumer Power Advocates Are:

- Columbia University
- New York Presbyterian Hospital System
- Continuum Health Partners
- Mount Sinai Medical Center
- Memorial Sloan Kettering Cancer Center
- NYU Hospitals Center: NYU Medical, NYU Downtown Hospital, and the Hospital for Joint Diseases
- New York University