

VIA AIRBORNE EXPRESS

June 2, 2003

Hon. Janet H. Deixler, Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, New York 12223 - 1350

Re: Case 03-E-0641 – Proceeding on Motion of the Commission Regarding Expedited
Implementation of Mandatory Hourly Pricing for Commodity Service.

Dear Secretary Deixler:

Please find attached Consumer Power Advocates' (CPA) comments on the above referenced case. CPA represents several major New York City energy consumers whose budgets, operating costs and operational procedures may be directly impacted by the changes proposed within the case.

Respectfully submitted,

Catherine M. Luthin
Principal, Luthin Associates, Inc.

ASC/eg
Enclosures
cc: file

I. Introduction

On April 30, 2003, the Public Service Commission (Commission) issued an Order Instituting Proceeding (Order), [CASE 03-E-0641 - Proceeding on Motion of the Commission Regarding Expedited Implementation of Mandatory Hourly Pricing for Commodity Service] to evaluate the need for changes to the utilities' real time pricing (RTP) tariffs to more effectively reduce demand and peak period pricing and to encourage conservation. Consumer Power Advocates (CPA) has articulated below our responses to the 10 questions on which the PSC is seeking interested parties' comments and recommendations.

II. Background

The NY Independent System Operator (NYISO) recently projected that over the next five years, statewide power load will increase from about 31,450 MW to 33,800 MW¹. As New York continues to experience substantial load growth, legitimate concerns have arisen over system reliability. These concerns have led to increasing levels of regulatory activity. Several steps have recently been taken to reduce load during peak demand periods and to attract new generation. One such initiative is the recently adopted NYISO demand curve that establishes a pricing structure of support levels at various points along a "demand curve", purported to ensure a somewhat predictable revenue stream for Divested Generation Owners. At this point, it is unclear whether this structure will be a solution to the lack of new generational entry in New York. What is clear is that it will dramatically impact the cost of electric capacity and could translate into a 3-year cost of up to \$1 billion to New York State consumers.

In recent press releases and its Power Alert III report, the NYISO has described "substantial" increases in Emergency Demand Reduction Programs responsible for nearly 1,500 MW of load reduction capability. Such programs are not a panacea as some have suggested. Many include penalties for non-compliance (despite mitigating circumstances) and changes in titling rules have forced many large program participants to de-enroll over Title V permit concerns. Several CPA members who are willing to participate (and have participated in the past) have expressed concern that by doing so they may place their facilities under the same scrutiny and standards as apply to new generation projects (see Appendix).

The expiration of the Department of Environmental Conservation's Emergency Rule allowing permitting exemptions is a major inhibitor to in-city institutions with large emergency generators. Overall, CPA believes a thorough review of backup/standby generation permitting must be conducted to lessen concerns that program participants may be unduly penalized due to increased emission scrutiny resulting from DRP participation. CPA recognizes the need to balance environmental concerns versus the need for greater reliability. The reality may be that demand response programs cannot bridge the gap until new generation projects come on-line. Clearly, there are inherent complications and conflicting

¹ Source: NYISO May 22, 2003 Press Release - New York State Electricity Supply Adequate for "Normal" Summer Weather

perceptions regarding the appropriate solution to New York's capacity shortfall. But what remains clear is the need to increase consumer choice – not reduce it by introducing mandatory service classifications.

III. Conclusion

The basic theory supporting real-time pricing is as follows – if consumers were so metered as to be able to change their usage patterns in response to real-time price fluctuations, then energy costs and the need for generation would be reduced. The rationale is compelling, but only with several significant caveats that will be discussed in detail below.

The NYISO has stated that it is working towards improvements in New York's ICAP and wholesale power markets to improve price signals. The theory is that better price signals encourages investment in new generation. RTP falls within this category. The intent of RTP is to promote interest in demand reduction precipitated by pricing signals that may otherwise not be known. CPA believes that consumers are already paying the bill for “improved price signals” via the adoption of the Demand Curve and Scarcity Pricing. It is far too early to determine the net effect of this model. Prudence should be our guide. The imposition of Mandatory RTP is premature and should be part of the existing menu of supply choices consumers have as each determines the supply option which best fits its operating model.

According to the PSC Order, real time pricing functions under the assumption that it “gives customers the opportunity to reduce consumption during higher priced peak hours and to transfer usage to lower price non-peak hours in order to reduce their electricity bills”. This is a very large assumption with regards to certain customers' ability to “transfer usage.” For many consumers such as hospitals, universities and real estate management companies, the ability to shed or shift load is limited by operational and regulatory considerations. A substantial amount of overhead is implied by such a service category. In order to effectively manage any RTP program, there must be several, well conceived operational processes in place. Those processes range from ensuring proper communications, defining new roles and responsibilities to accurate data capture and accounting practices. The cost and importance of these measures are often neglected or downplayed when, in fact, they are as crucial to success as proper metering.

Consolidated Edison Company of New York, Inc. has no voluntary RTP program participants. Clearly, this illustrates the need to revise the way such programs are conceived, developed and marketed. The stated purpose of deregulation is to provide consumers with more choices – not fewer. This model cannot be abandoned. Incentive programs funded by the Systems Benefits Charge have consistently yielded results through improved efficiencies and better technology. Consumer Power Advocates encourages the Public Service Commission to embrace this concept by developing additional customer incentives and removing barriers to RTP program participation, and by maintaining RTP as a voluntary service class.

IV. Responses to Questions

1. What impediments discourage commercial and industrial customers from participation in voluntary RTP programs?

The vast majority of commercial and institutional customers place a higher priority on meeting budget expectations than acquiring the absolute lowest energy prices. RTP programs carry with them budgetary and price uncertainty that these organizations find unacceptable, particularly under current economic conditions.

For consumers, the fundamental cost savings opportunity of real-time pricing lies in the ability to “ride counter to the system” – essentially the ability to buck the trend of usage so that when the New York Power System load and pricing are high, load reduction measures are implemented. And because these occurrences are not always predictable, the benefit of RTP can only be maximized by aggressive load reduction in response to day-ahead price signals as they occur – not as a general pattern of consumption.

Organizations such as hospitals and universities are severely constrained in their ability to shed load due to the nature of their business and strict regulatory guidelines. Others such as real estate management companies have tenants that may not be sub-metered or who have diverse energy budget goals. These constraints are both regulated and endemic to their business model

2. Is a mandatory program the most effective means for maximizing customer participation? Please identify and describe the potential benefits and detriments associated with mandatory RTP for RTP customers, customers in general, and the utilities.

We strongly disagree with a mandatory approach. Each customer in the TOD class has their own unique energy management approach that has evolved over time to meet their particular operating requirements. An open market must present consumers with the option to choose a class of service or competitive supplier that best suits their needs. Clearly, a customer's right to choose a competitive supplier (or remain in a competitive agreement) must remain intact. The lack of price transparency in New York power markets is a primary reason consumers choose fixed price competitive electric purchase agreements. As opposed to markets in which price volatility is mitigated by adequate supply, New York's energy market is characterized by periods of extreme volatility necessitating price caps and market mitigation procedures that, in turn, inhibit the evolution of a truly functional market. CPA supports RTP as a consumer choice but not as a mandatory service class. CPA supports more choice, not less.

3. Are there specific classes of customers for whom mandatory RTP would be most and least appropriate?

New York hospitals bear the responsibility of protecting the lives of those who have entrusted their care to them. The threat that a power outage poses to those who cannot defend themselves is very

real. Beyond their moral obligation to those patients, Hospitals must adhere to National Fire Protection Association (NFPA) Life Safety Codes and Guidelines that mandate the protection of patients and explicitly limit the acceptable use of emergency generators².

Under such an operating environment, hospitals cannot simply shed load in response to external conditions such as power capacity shortages or brownout conditions. The patient undergoing a heart transplant clearly cannot choose the time to require care. Doctors cannot postpone urgently required procedures. Recognizing this, safety codes establish a “defend in place” paradigm that dictates that emergency generators be used to support only specific applications – a “Critical Branch” for those patient care and equipment needs such as operating rooms, intensive care, respirators and oxygen, and a “Life Safety Branch” for such functions as alarms, emergency lighting and elevator service.

While all hospitals must have emergency generators, this equipment protects a relatively small portion of load associated with critical patient care and emergency safety. It is not intended for continuous duty – on the contrary it is viewed within the hospital community as an asset to be protected and only used under emergency situations (or for regular maintenance). In fact, the Department of Environmental Conservation specifically prohibits the use of emergency generation for participation in DRP programs.³

4. Does mandatory hourly pricing result in monthly bill variations that customers may find unacceptable or objectionable? What actions could be taken to encourage customers' acceptance and lessen objections?

As previously stated, RTP programs carry with them budgetary and price uncertainty that large TOD organizations find unacceptable. In fact, risk tolerance is one of the primary decisions that is made when first determining a customer's energy management strategy. Experience shows that approximately 90% of all customers choose budget certainty over lowest possible price. Among those customers that expressed an interest in RTP, the majority feel that their current operating environments cannot support such programs at this point in time. They cite the need for better metering and monitoring capabilities and operational processes for load shedding which currently do not exist.

The actual cost of implementing the required metering and operational oversight required may be substantial. In the past, subsidies such as NYSERDA's PON 620 were available to help offset some of these costs. The development of additional incentive programs developed specifically to eliminate RTP program obstacles will be necessary.

5. Is it reasonable, as a first step, to shift customers taking service under mandatory time-of-use (TOU) rates to mandatory RTP?

Please see responses to questions #3 and #4

² Source: NFPA 101

³ Source: NY State DEC White Paper – Distributed Generation Rule dated November 19, 2002

6. What is the impact of mandatory hourly pricing, if any, on customers who purchase commodity services from an Energy Service Company?

According to past Con Edison testimony, real time pricing was designed to be revenue-neutral as a system average – which means it is not a subsidized rate and that, assuming no active load reduction efforts, a customer whose usage mimics system patterns would be charged approximately the same for energy as they would be under full service rates. However, our analysis of 2001 Day Ahead Market (DAM) prices for a large institutional customer indicates the risks inherent to such a purchasing strategy. The individual characteristics of a facility (i.e. load factor, consumption pattern) coupled with external factors (i.e. weather, gas prices, market mitigation measures) significantly impact the total cost of supply. As is the case with virtually all Con Edison tariff rates, the ability to identify and price certain cost component is an extremely cumbersome task. Lack of price transparency remains a significant issue that needs to be resolved within New York energy markets. Without full disclosure of all price components (including accessible market data for each), customers remain at a disadvantage on several levels. Lack of price disclosure prevents consumers from adequately valuing competitive supply agreements, properly valuing potential participation in demand response programs, developing informed budgets and conducting financial and trend analysis. When ESCOs are the only ones with access to this data, it places consumers in an unfair and vulnerable position. Clearly, this scenario should be unacceptable to the PSC.

7. Would mandatory hourly pricing influence customers to implement or undertake conservation or other load management programs?

The determination of whether a consumer should obtain service under a RTP program is ultimately linked to the ability to aggressively manage load. Exposure to price volatility is a major risk factor which must be clearly understood when contemplating service under RTP programs. While price caps are enforced within the NYISO marketplace, it is possible, due to technical reasons, for prices to move higher than \$1,000 per megawatt hour in the day-ahead market. Prolonged temperature extremes or the loss of a generation facility are two examples of events that can cause prices to move sharply higher. As illustrated in the analysis below, despite a relatively benign average price of \$93 for the month of August, just a few hours of prices around, or above, the \$1,000 mark can push budgets into the red. Clearly, load management is an integral part of successful implementation of any RTP program.

8. Interval meters are necessary to enable customers to participate in RTP programs. What actions, if any, are necessary to expand the installation of interval meters and to provide state-of-the-art interval meters? What are the costs of effective metering and associated systems necessary to bill hourly prices?

Interval meters are necessary for RTP program participation but clearly, they are not enough for effective management. Certain software tools greatly facilitate the load management process. They provide usage profiles in real-time, automated reporting, energy-use benchmarking tools, alarm functions, guidance on market developments, assistance in preparing bids, and soliciting and negotiating offers for power. Implementing Demand Side Management (DSM) programs can alter total energy

consumption and usage patterns resulting in cost savings and operating efficiencies. For Real Estate Management Companies, a tenant notification program might be implemented in response to pre-established price thresholds. Such a program could empower tenants with an active role in reducing their energy bills while enabling the Management Company to provide a low cost value-add service. Conservation measures designed to reduce consumption during peak periods are more readily implemented in light of known pricing as opposed to after the fact. Clearly, this is the sort of process the Public Service Commission has in mind.

Each consumer must have the option to decide if there is sufficient flexibility within its organizational structure, or perhaps more importantly, within its internal clients' expectation of services, to implement a sufficient DSM program that would maximize the cost saving opportunities within real-time pricing.

9. What are the benefits of a separate initiative to consider the reasonableness and feasibility of applying time-differentiated or locational-varying delivery service rates in conjunction with RTP for commodity service?

CPA opposes the imposition of an additional layer of cost uncertainty on consumers at this time. The notion that consumers could effectively manage two separate initiatives, each imposing substantial price volatility is unrealistic.

10. Are there rate design options other than mandatory RTP that might achieve similar load and price reduction objectives?

CPA believes that the most effective way to promote demand response is through the creation of increased incentives for load reduction. Example of potential incentives might include:

- a. Additional funding for new and existing programs, such as those that promote metering and DSM technology implementation necessary to foster an environment in which consumers will embrace Real Time Pricing.
- b. Establish pilot programs that limit financial risk while promoting new operational and technological processes. Such programs will establish a body of "lessons learned" data which others consumers can draw upon.
- c. Fund a study of risk management products such as weather insurance and financial derivatives that transfer price risk to another party. Such tools can be employed in conjunction with RTP service to minimize price risk. Various energy supply companies in the New York market have indicated their willingness to structure these types of agreements and provide price and/or load protection at certain pre-defined points. It should be noted that these agreements are financial in nature and have additional cost and/or accounting requirements.

CPA believes careful consideration should be given to these options. Consumer perception that RTP may be too risky by itself must be addressed if the benefits envisioned by such programs are to be realized.

V. Conclusion

The imposition of mandatory Real Time Pricing programs cannot succeed at this time given the technological and operational obstacles that must be overcome. Consumers, already reeling from economic pressures, are ill equipped to manage the risks inherent to such programs. In addition, there is a steep learning curve for the operational and cultural changes that inevitably accompany such a departure from the status quo. The stated purpose of deregulation is to promote more choices – not fewer. We encourage the PSC to develop additional customer incentives to RTP program participation and make RTP a voluntary service class.

APPENDIX

**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**

JANUARY 10, 2003

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TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT..... 1

SUMMARY OF POSITION.....2-3

COMMENTS.....3-6

VI. I. SYSTEM RELIABILITY

II. EMERGENCY DEMAND RESPONSE PROGRAMS

VII. III. RULES FOR EMERGENCY GENERATION PARTICIPATION IN EDRP

CONCLUSION..... 6

RECOMMENDATIONS.....7

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 highs⁴. 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.

⁴ 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.⁵

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

⁵ Note: the EPA letter revises Federal guidance operating criteria for emergency generators but does not address State and local permitting requirements).

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 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.”⁶

⁶ Source: “Bloomberg calls for more power plants” – Greenwire – July 23, 2002

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.”

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.⁷ 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***

⁷ Non-exempt status pertains to engines with ratings equal to or greater than 225 hp in severe ozone non-attainment areas.

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: March 21, 2005
 Avon By-The-Sea, New Jersey

Respectfully submitted,

Luthin Associates, Inc., representing:
Consumer Power Advocates

The Consumer Power Advocates are:

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