



July 8, 2010

VIA HAND DELIVERY AND ELECTRONIC MAIL

Christina Dowd  
New York State Department of Environmental Conservation  
Bureau of Habitat  
BTA Policy Comments  
625 Broadway, 5th Floor  
Albany, New York 12233-4756

Subject: Comments of the New York State Reliability Council on Proposed  
Policy on Best Technology Available (BTA) for Cooling Water Intake Structures

Dear Ms. Dowd:

Attached please find the Comments of the New York State Reliability Council on the New York State Department of Environmental Conservation Proposed Policy on Best Technology Available (BTA) for Cooling Water Intake Structures. Please contact me at (518) 626-9000 or at [pgioia@dl.com](mailto:pgioia@dl.com) if you have any questions concerning these comments.

Sincerely,

A handwritten signature in black ink that reads "Paul L. Gioia". The signature is written in a cursive style with a large, sweeping "P" and "G".

Paul L. Gioia  
Counsel  
New York State Reliability Council

July 8, 2010

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
PROPOSED POLICY ON BEST TECHNOLOGY AVAILABLE (BTA) FOR  
COOLING WATER INTAKE STRUCTURES**

**COMMENTS SUBMITTED ON BEHALF OF  
THE NEW YORK STATE RELIABILITY COUNCIL**

**I. INTRODUCTION**

The New York State Reliability Council (NYSRC) was approved by the Federal Energy Regulatory Commission in 1998.<sup>1</sup> The NYSRC is assigned specified responsibilities related to the maintenance of electric system reliability in the New York control area. These responsibilities include the promulgation of reliability rules that may be more specific or more stringent than the reliability standards and criteria adopted by the Northeast Power Coordinating Council (NPCC) or the North American Electric Reliability Council (NERC), in order to meet the special reliability requirements of the New York Control Area. The NYSRC's reliability rules establish standards that must be complied with by the New York Independent System Operator (NYISO) in its operation of the New York State bulk power system, and by all entities that participate in the NYISO's electricity markets. The NYSRC also adopts the annual statewide installed reserve margin for the New York control area, to ensure that resource adequacy criteria are met and that sufficient resources are available to meet New York State's peak load electricity requirements.

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<sup>1</sup> Central Hudson Gas & Electric Corp., 83 FERC ¶ 61,352 (1998).

The NYSRC appreciates the opportunity to submit these comments on the Department of Environmental Conservation (DEC) proposed policy on Best Technology Available for Cooling Water Intake Structures (BTA Policy).

## II. COMMENTS

### 1. **The BTA Policy Should Not Be Adopted Until the Potential Adverse Impacts on Electric System Reliability Have Been Carefully Considered**

The BTA Policy could have a significant impact on the economic viability of substantial portion of the electric generating capacity in New York State, which, in turn, could have a significant impact on electric system reliability in New York State. The NYSRC submits that the potential impact on electric system reliability should be carefully considered prior to adoption of the BTA Policy.

New York State has a well-established and strong public policy of supporting a high level of electric system reliability. This policy reflects an understanding of the very serious consequences for New York's citizens and economy that would result from an unreliable bulk power electric system. Those consequences include not only the immediate effects on current New York citizens and businesses, but also the resulting constraints on economic development in New York State that would result from a lack of confidence that an adequate and reliable supply of electricity will be available. The strong state policy in favor of a reliable electric system has been articulated and implemented by the New York Department of Public Service (PSC) over several decades. This state policy was responsible for the formation of the NYSRC when

the competitive wholesale electricity market was established ten years ago, in order to ensure that the high level of electric system reliability would be maintained in New York State. Consequently, it is important that DEC thoroughly consider the potential reliability impacts of the BTA Policy prior to its final adoption.

A review of the draft BTA Policy, including the Appendices, does not provide sufficient assurance that potential reliability impacts have been adequately considered. For example, there is no reference in the BTA Policy to consultation with or input from the NYISO or the PSC, the two entities that could provide the most relevant information on the potential impact of the BTA Policy on electric system reliability in New York State. Furthermore, it is our understanding that the NYISO's Reliability Needs Assessment (RNA) for 2010 will include an assessment of potential environmental initiatives on the state's bulk power system, including the potential impact of the proposed BTA Policy. The NYISO's RNA assessment is expected to be completed this summer.

The NYSRC recommends, therefore, that the DEC consult with the NYISO and the PSC and seek their input concerning the potential impact of the BTA Policy on bulk power system reliability and that the BTA Policy not be finalized until the NYISO's 2010 RNA analysis has been completed and carefully considered.

2. **The Procedures for the Implementation of the BTA Policy Should Include Consideration of the Impact of a Mitigation Measure on the Economic Viability of an Electric Generation Facility**

The draft department procedures for implementing the performance goals of the BTA Policy set forth a methodology for considering the costs and benefits of a mitigation measure under consideration for a particular facility.<sup>2</sup> Under Step 3 of the procedures, the DEC will assess the cost of a mitigation alternative by comparing its cost to the projected revenues for that facility. The proportional aquatic resource benefit of the mitigation alternatives will be measured as the proportional change in the number of vulnerable aquatic organisms estimated to be protected by the mitigation alternative compared to the number at risk. The objective of this comparison is to determine whether the cost of the mitigation alternative is “wholly disproportionate” to the aquatic resource benefits (i.e., the increase in the level of aquatic resource protection).

The NYSRC’s concern with this analysis is that it does not consider the impact of the mitigation alternative on the economic viability of an electric generation facility. Comparing the cost of a mitigation measures to a facility’s gross revenues alone will not provide sufficient information regarding the impact of a mitigation measure on the facility’s continued economic viability. Without information concerning the impact of a proposed mitigation measure on the economic viability of generation facilities, the DEC will not be in a position to understand and consider the potential impact of a mitigation measure on electric system reliability.

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<sup>2</sup> Appendix B, Department Procedures for Determining “Best Technology Available”.

It should be noted that the potential impact on electric system reliability of the retirement of a generator is not limited to the loss of the generating capacity of the facility. Reliability impacts also may include a reduction in necessary voltage support and in other ancillary services provided by a generation facility that are needed to maintain reliability. Often the location of a facility will be a significant factor in its importance to bulk power system reliability. In assessing both the economic impact of a proposed mitigation measure on a particular generation facility, and the relative importance of the contribution of that facility to the various aspects of electric system reliability, the NYISO and the PSC would be in a position to provide relevant information for DEC's consideration.

The NYSRC recommends, therefore, that the procedures to implement the performance goals of the BTA Policy include an evaluation of the impact of a proposed mitigation alternative on the economic viability of an electric generation facility and the related potential impact on bulk power system reliability, and that the NYISO and the PSC be consulted by Staff on those issues.

3. **The Procedures for the Implementation of the BTA Policy Should Provide Staff the Flexibility to Consider All Relevant Facts and Circumstances, Including Potential Impacts on Electric System Reliability**

Step 4 of the proposed procedures state that Staff will use professional judgment in making a site-specific determination of:

a) whether the level of mitigation provided by the most protective alternative is reasonable and necessary for minimizing adverse environmental impacts at the facility,

b) whether the alternative or array of alternatives proposed by the applicant or facility owner will achieve BTA, and

c) whether one or more of the other remaining alternatives can achieve an approximately equivalent level of mitigation as the most protective alternative.

While the proposed procedures would allow Staff to use professional judgment in making a site-specific determination with respect to whether the most protective alternative is reasonable and necessary, whether alternatives proposed by the facility owner will achieve BTA, and whether one or more other alternatives can achieve a level of mitigation approximately equivalent to the most protective alternative, the procedures do not provide for consideration by Staff of the potential impact of a mitigation alternative on electric system reliability. Given the strong public interest in electric system reliability and New York State's long-standing public policy in favor of maintaining a high level of electric system reliability, it would be inappropriate for the DEC's BTA Policy to permit the making of a determination with respect to a reasonable and necessary mitigation alternative without direct consideration of the potential impact on electric system reliability.

The NYSRC, therefore, recommends that the procedures for the implementation of the BTA Policy permit Staff, in consultation with the NYISO and the PSC, to consider potential impacts on bulk power system reliability when making a site-specific determination as to whether a mitigation alternative is reasonable and necessary.

### **III. CONCLUSION**

The NYSRC respectfully requests that the DEC adopt the following recommendations with respect to the proposed BTA Policy:

1. The DEC should consult with the NYISO and the PSC and seek their input concerning the potential impact of the BTA Policy on bulk power system reliability and the BTA Policy should not be finalized until the NYISO's 2010 RNA analyses has been completed and carefully analyzed.
2. The procedures to implement the performance goals of the BTA Policy should include an evaluation of the impact of a proposed mitigation alternative on the economic viability of an electric generation facility and the related potential impact on bulk power system reliability, and should provide for Staff consultation with the NYISO and the PSC on those issues.
3. The procedures to implement the BTA Policy should expressly permit Staff, in consultation with the NYISO and PSC, to consider the potential impacts on bulk power system reliability when making a site-



specific determination as to whether a mitigation alternative is reasonable and necessary.

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