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June 23, 2008

VIA E-MAIL AND FEDERAL EXPRESS

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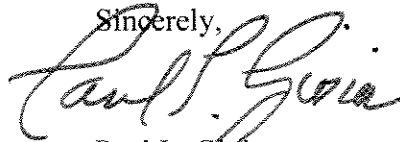
Re: Revised 6 NYCRR Part 242, CO₂ Budget Trading Program; and
Revised 21 NYCRR Part 507, CO₂ Allowance Auction Program

Dear Messrs. Sheehan and Keane:

The attached comments on Revised 6 NYCRR Part 242, CO₂ Budget Trading Program, and Revised 21 NYCRR Part 507, CO₂ Allowance Auction Program are submitted on behalf of the New York State Reliability Council (the "NYSRC").

Please contact me if you have any questions concerning the attached comments.

Sincerely,



Paul L. Gioia
Counsel to the NYSRC

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COMMENTS TO

**THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
AND
THE NEW YORK STATE ENERGY RESEARCH DEVELOPMENT
AUTHORITY**

ON

THE REVISED REGIONAL GREENHOUSE GAS INITIATIVE RULE

SUBMITTED ON BEHALF OF

THE NEW YORK STATE RELIABILITY COUNCIL

June 23, 2008

Introduction

The New York State Reliability Council (“NYSRC”) was established as part of the restructuring of the electricity industry in New York State and the formation of the New York Independent System Operator (“NYISO”). The NYSRC develops, and from time to time updates, reliability standards needed to maintain the reliability of the New York State electric power system that must be complied with by the NYISO and all entities engaging in electric power transactions.

New York State has a long history of support for a high level of electric system reliability. That support reflects the experience of major system interruptions in the past and the extremely serious consequences of such service interruptions in New York State and especially in the New York Metropolitan Area. It is essential, therefore, that the Regional Greenhouse Gas Initiative Rule (“RGGI”) adopted by the Department of Environmental Conservation (“DEC”) reflects New York State’s long-standing commitment to maintaining a high level of electric system reliability.

Previous NYSRC Comments

On December 21, 2007, the NYSRC provided comments on the previously proposed RGGI Rule. The NYSRC submits that its previous comments were not accorded appropriate consideration and, as a result, the revised RGGI Rule continues to lack provisions for the monitoring of potential adverse effects of the RGGI program on electric system reliability in New York State, as well as clearly defined actions that could be taken by DEC to protect the public health and safety should unanticipated threats to reliability develop as a result of the RGGI program.

In its previous comments, the NYSRC recommended that the RGGI Rule expressly recognize the possibility that unforeseen reliability impacts may occur following

implementation of the RGGI program in New York and the rest of the RGGI region. Such impacts could occur as a result of greater than expected retirements of coal and/or oil fired units due to the financial impact of RGGI requirements, unexpected load growth, or the inability to develop alternative generation or demand-side resources in time or in the locations in which they are needed to meet reliability requirements.

One of the NYSRC's primary responsibilities is to establish the annual statewide installed reserve margin ("IRM"). The IRM represents the percentage of capacity above the expected peak load that is needed to meet the NYSRC's resource adequacy criterion. The NYSRC's resource adequacy criterion is that the probability of disconnecting firm load due to resource deficiencies, or loss of load expectation ("LOLE"), is not more than once in ten years. (NYSRC Reliability Rule A-R1).

The 2008 Reliability Needs Assessment ("RNA") issued by the NYISO includes a sensitivity analysis to consider the potential impact of the environmental restrictions that will be implemented under the RGGI program in the year 2010. The RNA analysis was conducted to estimate the minimum number of allowances necessary to maintain an acceptable LOLE for the electric grid in New York. To determine this minimum number, coal fired capacity was assumed to be removed from service and existing gas fired capacity was dispatched at higher production rates. The analysis found that after removing 1,248 megawatts of coal fired capacity from service, 52 million allowances per year must be made available to New York generators in order to meet reliability requirements. The RNA notes that without sufficient allowances, generators will become energy-limited resources and cannot operate to meet bulk power system electricity needs and also comply with the RGGI program.¹ The RNA further notes that any market

¹ NYISO 2008 Reliability Needs Assessment, p. 26.

manipulation, such as hoarding, or market power activity, intended to restrict allowance availability to New York generators may result in a failure to meet reliability criteria.²

The NYSRC's recently completed IRM Technical Study Report, which is the basis for its determination of the required IRM for the New York bulk power system for the 2008-2009 capability year, includes a scenario that considers the possible impact of the NYISO's RGGI analysis on the IRM. The scenario indicated that if the assumptions in the RNA RGGI analysis regarding the availability of allowances for 2010 were applied to the 2008 IRM requirement, the IRM could increase from 15.0 % to approximately 17.0%. This would mean that, in order to meet the required LOLE, load serving entities ("LSEs") would have to secure additional resources. If those resources were not available in the locations in which they are needed, the level of reliability in New York would not meet state or regional requirements. The RGGI allowances, therefore, may be viewed as a reliability resource. To the extent they leave New York State, the New York IRM must increase. At some point, an increased IRM may not be achievable given the available resources.

The NYISO's 2008 RNA also included a sensitivity analysis with respect to the restrictions to be imposed under the High Electric Demand Days ("HEDD") program in 2009. This analysis suggested that approximately 2,330 megawatts may be removed from the system as a result of HEDD restrictions, increasing the need for alternative resources or load reductions. The NYSRC's IRM Technical Study Report includes a scenario in which the results of the RNA's HEDD analysis are applied to the IRM requirement for 2008. This scenario indicates that the IRM could increase from 15.0% to more than 20.0%, which could require LSEs to purchase a significant amount of additional resources in order to meet reliability criteria. In addition, the HEDD program could make it necessary to depend on out-of-state resources to

² *id.*

meet New York's minimum reliability requirements. If the current LOLE criteria is not met, more frequent emergency operating measures will result, which could have significant adverse consequences for New York State. Neither the NYISO nor the NYSRC has conducted a scenario which includes the combined effects of the RGGI and HEDD programs.

These issues have not been raised to suggest that the RGGI program necessarily will result in deterioration in the reliability of New York's bulk power electric system. They do strongly indicate, however, that there is a potential that the RGGI program, in combination with other environmental programs, will have a significant effect on resources that currently support electric system reliability in New York, and that substantial amounts of alternative resources may be needed to replace them in the relatively near future if the required level of system reliability is to be maintained. If those resources are not developed in a timely fashion, do not perform as expected, are not developed in the locations in which they are needed, or if assumptions with respect to load growth or other relevant factors turn out to be incorrect, electric system reliability would be placed in jeopardy.

NYSRC Recommendations

Given the crucial importance of electric system reliability to New York State, in its previous comments the NYSRC strongly recommended that the proposed RGGI Rule be revised to include a provision for the monitoring of the impact of RGGI requirements on New York State electric system reliability. Specifically, the NYSRC recommended that the RGGI Rule authorize the PSC to monitor the impact of the RGGI program on electric system reliability, including the results of the NYISO's RNA studies and the NYSRC's IRM Technical Study Reports, and publish its findings for consideration by the DEC and other interested parties.

The NYSRC also recommended that the RGGI Rule provide that the DEC, in consultation with the PSC and other relevant entities, have the clear authority to take appropriate

measures to modify or suspend the RGGI program if necessary to maintain electric system reliability.

Response to NYSRC Comments and Recommendations

The Assessment of Public Comments (“Assessment”) on the proposed RGGI Rule indicates a lack of understanding of the NYSRC’s comments and the public interest concerns that underline its recommendations.

In response to the NYSRC’s comments, the Assessment states that the PSC “has responsibility of overseeing the adequacy of New York State’s bulk power system and thus needs no further authority to perform the functions suggested by the [NYSRC]”.³ The Assessment goes on to state that “[t]o the extent the NYSRC believes the PSC is not fulfilling its responsibility it will have opportunities to interface directly with that agency”.⁴ The Assessment describes the NYISO’s reliability planning process and notes that it includes a plan to maintain electric system reliability over a ten year period. The Assessment also refers to the pending proceeding undertaken by the PSC to consider issues related to long-term electricity resource planning (Case-07-E-15077).⁵

The foregoing response indicates a lack of understanding of the NYSRC’s concerns, and, more important, a lack of understanding of the potential consequences that a degradation in electric system reliability resulting from the RGGI program could have on the citizens of New York State and its economy. The NYSRC is very familiar with the responsibilities of the PSC and the NYISO in assessing and taking actions to protect electric system reliability. However, their ability to address significantly unforeseen changes in the factors that affect electric system reliability is limited. The development of significant new

³ Assessment, p. 14.

⁴ *id.*

⁵ *id.*

energy resources takes years and there are considerable barriers to the development of new resources. Furthermore, given the nature of New York's bulk power system, resources may be needed in particular locations, most likely in New York City and Long Island, where the development of new resources are especially difficult.

The PSC and the NYISO planning activities are designed to address needs that can be reasonably forecasted over a number of years. At this time, there can be no definitive assessment of the impact of the RGGI program and New York energy resources, and its potential impact on reliability. The Assessment states that initial PSC and NYISO assessments did not result in findings that the RGGI program would impact reliability.⁶ However, it should be recognized that these assessments are very preliminary and cannot provide a reasonable basis for a conclusion that the RGGI program will not, in fact, impact reliability nor provide a reasonable basis for rejecting recommendations that the DEC accept responsibility for monitoring such potential impacts and taking appropriate actions to protect the public, if necessary.

Prudence requires, therefore, that the RGGI Rule include express provisions for the monitoring of the program's impact on reliability. If, in fact, the RGGI program does not impact reliability, the monitoring effort will provide assurance to that effect. If, however, the RGGI program does have an unanticipated impact on reliability, the DEC should be aware of such an impact, and have effective mitigation measures in place to protect the public from a degradation in reliability, which can have very severe consequences. Simply referring to the responsibilities of the PSC and the NYISO does not adequately fulfill the DEC's responsibility as the administrator of the RGGI program to address the potential impact of the program on electric system reliability and to ensure that it has the clear authority to take action to mitigate

⁶ Assessment, p. 15.

such impacts. This responsibility clearly rests with the DEC and cannot be effectively exercised by the NYISO or the PSC.

The Assessment further states that in the event reliability does become an issue, the Department can (1) exercise enforcement discretion, and/or (2) issue emergency rules to modify or suspend the program.⁷

While the NYSRC appreciates the DEC's recognition that it may be called upon to act should the RGGI program result in negative reliability impacts, this response is unsatisfactory. First, the reference to an "exercise of enforcement discretion" is not defined in the Assessment and is not contained in the Rule. The DEC should include in the Rule an express provision for the exercise of enforcement discretion in response to impacts on reliability, and provide some description of the nature of such enforcement discretion. Second, the DEC's general ability to issue emergency rules may not provide adequate protection to the public. The Assessment does not provide any information concerning the DEC's ability to issue emergency rules, the standards for the issuance of such rules, or how long such a process would take. Further, there is no reference in the Rule to the issuance of emergency rules. Instead of reliance on the development of emergency rules, the RGGI Rule should expressly provide for the authorization of DEC to modify or suspend the RGGI program to the extent reasonably necessary, upon a finding by the DEC, after consultation with the PSC, NYISO and the NYSRC, that such action is necessary in order to maintain electric system reliability.

⁷ Assessment, p. 14

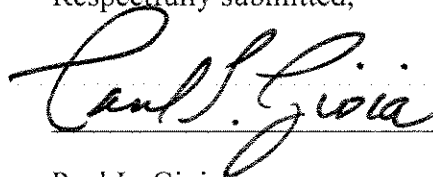
Recommendations

The NYSRC makes the following recommendations concerning the final RGGI

Rule:

1. The RGGI Rule should expressly provide for the monitoring of the impact of the RGGI program on electric system reliability.
2. The RGGI Rule should expressly provide for specific actions that the DEC is authorized to take should the RGGI program have a negative impact on electric system reliability. Such authorization should include the ability to modify any aspect of the program or suspend the program to the extent necessary and for a time period necessary to protect the public from the consequences of reduced electric system reliability.

Respectfully submitted,



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