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**Gavin J. Donohue**, *President &  
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Jared Snyder  
Deputy Commissioner for Air Resources, Climate Change and Energy  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-1010

Dear Jared,

Thank you for taking the time to meet with us and our affected Member companies about the New York State Department of Environmental Conservation's (DEC) upcoming rulemaking on Peaker Turbine Air Quality on High Electric Demand Days (HEDD). Since our meeting, the DEC has initiated two additional stakeholder processes on changes to 6 NYCRR Part 251 - CO2 Performance Standards for Existing Facilities and on 6 NYCRR Part 243 (Transport Rule NOx Ozone Season Trading Program), in addition to Parts 244 (Transport Rule NOx Annual Trading Program) and 245 (Transport Rule SO2 Group 1 Trading Program). We appreciate the willingness of the DEC to engage affected facility owners at this early stage.

#### **Importance of DEC Working with NYISO and PSC on Reliability and Cost**

The DEC needs to continue to work closely with the New York Independent System Operator (NYISO) and the New York State Department of Public Service (DPS) in identifying the reliability consequences that would arise from the implementation of these rulemaking changes individually and collectively. This evaluation is especially important for New York City and on Long Island. Moreover, this coordinated effort is essential, in light of the agreement to close the Indian Point Energy Center in the same timeframe that these rules would be implemented. Regulators, policy makers and system operators must carefully consider the reliability role of existing resources and whether additional resources will be able to be developed in time to provide the necessary reliability services.

The analysis must identify a pragmatic path forward, based upon an independent and objective review of units at risk as a result of the implementation of the rulemaking changes. The most appropriate vehicle for conducting such an evaluation is through the NYISO's biennial Reliability Needs Assessment (RNA) process. The NYISO will commence the next RNA process in 2018, and it

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already has expressed concern regarding the cumulative impact of a number of proposed environmental regulations, including those discussed herein, on reliability, in light of the announced retirement of Indian Point. In the event of a system outage, peaking units are quick-starting resources, many with remote operability, and many are blackstart units, having a central role in restoring system operations. These characteristics (quick-starting and remote operability) of peakers mean they may need to provide reliability services more often, and at potentially higher capacity factors, than they have done so historically. This increased operation may occur, as more renewables and other variable/non-dispatchable resources come online. In order to ensure such resources are interconnected to the electric system, peaking facilities must provide necessary quick start reserves and energy when needed in the precise amounts required by the system operators to maintain reliability. Therefore, DEC should take into consideration the timing of the NYISO's 2018 RNA when finalizing new environmental regulations.

With that in mind, DEC coordination with the NYISO and the DPS on the development and implementation of The Brattle Group's report on incorporating the social cost of carbon dioxide emissions into the NYISO's wholesale energy market is also essential. The Regional Greenhouse Gas Initiative (RGGI) already provides a market-based signal for investment, but, ultimately, pricing carbon dioxide in the NYISO's energy market will be necessary to provide a comprehensive long-term market-based price signal for investment, and to maintain the long-term continued success of the wholesale market structure. It is imperative that all of the pieces of the regulatory, policy and market approaches fit together in terms of their overall system reliability impact.

### **CO2 Performance Standards for Existing Facilities**

In terms of the DEC's intended changes to have Part 251 apply to all existing fossil facilities, it is important to note that these units already are regulated by the RGGI program. The requirement for existing Part 251 to apply to new and expanded facilities arose from the re-enactment of the Article 10 Power Plant Siting Law, after the RGGI program was developed, and that law specifically stated that the regulation "would apply to major electric generating facilities that commenced construction *after* the effective date of the regulations" and not to existing facilities; the existing Part 251 took effect on June 27, 2012. When the DEC and the other RGGI states worked on developing an approach for implementing the Clean Power Plan (CPP), the DEC specifically favored the RGGI approach over the emissions standard approach under Part 251. In its November 5, 2014 letter to the United States Environmental Protection Agency (EPA), the RGGI states (including New York) indicated that: "The RGGI states especially welcome the CPP's acceptance of multi-state and mass-based programs as a means of compliance with the EPA's proposed emission guidelines. RGGI has demonstrated that, by working together, groups of states can achieve greater emission reductions at a lower cost, all while creating jobs, maintaining grid reliability, and improving the regional economy. Importantly, a mass-based program like RGGI avoids many of the complications of a rate-based approach, including those discussed by the EPA in the proposal, while also simplifying compliance and enforceability."

DEC Staff stated that the intention of having Part 251 apply to existing fossil units is to accomplish the Governor's goal of having coal-fired units repower to a cleaner fuel or to close no later than 2020. Existing regulations, public policies and the resulting economics of the wholesale electricity

market already are having the effect of markedly reducing the operation of all fossil facilities, without the additional impact of having Part 251 apply to those existing facilities. Currently, the DEC and the RGGI states are in the process of tightening the RGGI emissions cap, which has the result of creating more pressure upon the operation of existing fossil units. The price signal that the RGGI program provides in the near-term, when coupled with the price signal that would arise from including the cost of “carbon” in the NYISO’s market, would have the same outcome that the DEC is seeking but in a market-based way – a highly efficient and low emitting electricity system that also provides a competitive price signal for the renewable energy investment to meet the Clean Energy Standard and to maintain New York State’s leadership on addressing climate change.

### **Cross State Air Pollution Rule Allowance Allocations**

Owners of electric generating facilities need to be sure that they can acquire allowances they need from a viable market in relation to the allowances from the Energy Efficiency and Renewable Energy Technology (EERET) Account to be sold by the New York State Energy Research and Development Authority (NYSERDA). The liquidity of this allowance market needs to be preserved. The draft Express Terms, which DEC Staff has provided for initial review, also need to be clarified to provide a process for owners of electric generating facilities to know if they need EERET allowances and when to purchase them from NYSEDA, in more detail than the rule’s provision that: “NYSERDA is required to make all of the allowances in the EERET account available for sale on the open market no later than 30 days after receipt of the allowances by the EERET account.”

Owners of electric generating facilities also need to know whether buying EERET allowances would be considered variable costs or fixed costs under the NYISO’s market rules; i.e., are the cost of EERET allowances factored into a generator’s energy market offers as a variable cost, such as is the case with RGGI allowances?

Moreover, the draft text of the rules does not currently include language to address the “right of first refusal” for owners of electric generating facilities to access allowances that would be sold by NYSEDA and does not currently address the concerns expressed during the DEC stakeholder meeting about the process for the sale of allowances by NYSEDA and the requirement that brokers are imposing for the purchase of an entire block of allowances. DEC Staff has indicated that it does not think that a regulatory change solution is needed to address these concerns and that they can be addressed with NYSEDA. IPPNY urges the DEC to continue to work with NYSEDA in order to address these concerns and to provide written clarity as to the process to resolve these matters.

### **Peaker Turbine Air Quality on High Electric Demand Days (HEDD)**

Owners of affected electric generating facilities need more time to comply with the contemplated emission limit requirements. The rule should include a phase-in of requirements, along with consideration of economics and a smoother transition.

The May 1, 2022 date, which is included the DEC Staff’s pre-proposal outline as the date by which the emission limits would take effect, is not enough time for existing and new facilities to be modified or constructed. More time is needed to modify and/or replace peaking facilities or to

allow existing facilities to convert to lower emitting levels. The permitting process can take up to two and half years to three years in totality. It can take three to five years to license, permit, and modify/build facilities. The DEC should consider a phased implementation and allow seven to ten years to implement the rule. This timeline will ensure that reliability is maintained and that necessary resources are modified/developed on an efficient schedule.

Starting the rule in 2022 also is difficult due to the economics of peaker facilities. The operational characteristics of peaker facilities provide a narrow window of opportunity to earn revenues. The facilities only operate for brief periods of time and a limited number of hours each year. They only operate when necessary to maintain reliability, and, most of the time, they are idle and in a reserve shutdown status. Peakers are in many ways the insurance policy against a power outage just like emergency generators. As such, annual emissions are relatively low.

This type of operation is a challenge for investors, as opportunities to earn a return on and of an investment currently depends on short-term and limited economic market signals. This challenge is compounded by the fact that natural gas prices and wholesale electricity market prices are near their lowest levels ever, resulting in a lack of revenue to upgrade or develop lower emission peaker units.

Averaging is an important flexibility tool to reduce emissions from peaking facilities; yet, the DEC Staff's outline of the pre-proposal would phase-out system averaging on May 1, 2024. Allowing only two years (2022 until 2024) of system averaging is too stringent. The DEC should allow system averaging to continue and should allow "bubbling" long enough for existing and new peakers to be modified and developed.

Furthermore, the DEC's outline of the pre-proposal should clarify what units can average and whether they can average with demand response. The terms of the DEC's outline for averaging with renewables is too stringent and does not provide much opportunity to average throughout New York State. Renewables often do not always run during peak demand periods, and variable resources are not currently able to be dispatched sufficiently to respond to system contingencies. Thus, averaging primarily with renewables will not necessarily accomplish the goal. Additionally, the proposed renewable averaging does not present a meaningful incentive for owners of existing peaking units to make the requisite investments in new renewable generation. If it is the DEC's goal to incentivize owners of existing peakers to invest in new renewable generation, then there should be no averaging sunset.

Additionally, the NYISO is undergoing a software upgrade that is to be completed in 2019. Software is needed for averaging. The NYISO may not be able to work on the HEDD rule until 2020 or 2021, which speaks again to the need for a longer implementation timeline for this rule.

Finally, while the compliance pathway of water injection leads to a NOx emission decrease, it also leads to a carbon monoxide increase. The DEC should consider the provisions of the Ozone Transport Commission Rule to have alternative emissions limits based upon water injection, taking into account technical feasibility, economics and reliability.

Thank you for the opportunity to provide these comments, and IPPNY urges you to incorporate them into your decision-making. If you have any questions or need additional information, please feel free to contact me.

Sincerely,



Gavin J. Donohue  
President & CEO

- Cc: Brad Jones, NYISO's President & CEO  
John Rhodes, Chairman of the New York State Public Service Commission (PSC)  
Alicia Barton, NYSERDA's President & CEO  
Kevin Lanahan, NYISO's Vice President for External Affairs  
Thomas Congdon, PSC's Deputy Chair and Executive Deputy of the NYS Department of Public Service  
Janet Joseph, NYSERDA's Vice President for Technology and Strategic Planning  
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Peter Carney, NYISO's Project Manager for Environmental Studies  
Benjamin Cohen, NYISO's Planning Environmental Engineer