

Issues with DEC Proposed Part 222 Rulemaking

The NYISO has been an active participant in the DEC's effort to develop rules for emergency generator participation in demand response programs. We agree that the DEC's rationale to limit NOx emissions from these sources on peak ozone days is reasonable from a public policy perspective. Given the NYISO's role in maintaining electric system reliability, we do have concerns that some of the provisions may have unintended consequences that unnecessarily limit the participation of these resources and unnecessarily impact reliability in an adverse way. Specifically, the NYISO requests that revisions be made to four areas of the proposed rule:

1.1a) Effective Date

Putting the necessary procedures in place at the NYISO to implement the DEC rules requires stakeholder approval; some require Board of Director and FERC approval as well. Even after approval, participants must be allowed time to work through the registration procedures with the DEC, the NYISO and other sponsors. Approximately two-thirds of the NYISO's total demand response resources participate in the NYISO's Installed Capacity (ICAP) market as Special Case Resources (SCRs). This program will require a new registration process. The effective date of May 1, 2007 does not provide enough time to accomplish all of these steps. The NYISO requests that the effective date be moved to November 1, 2007.

1.3(a)(1) Timing Between Reporting Operating Mode and Program Effective Date.

Section 1.3(a)(1) of the DEC rule states that:

By August 1, 2007, owners and operators of a demand response source operating under a registration certificate or permit issued by the department prior to May 1, 2007 must notify the department in writing whether the source will operate as an emergency power generating stationary internal combustion engine, a demand response source, or will accept the applicable fuel-specific emission limit established in subdivision 222-1.5(a) of this Subpart.

Section 1.5 indicates that the fuel-specific emission limits will take effect on January 1, 2008. With Part 222 taking effect on May 1, 2007, this means that a number of resources (see slide 12 of the accompanying NYISO survey presentation) that can meet the fuel-specific limits in 1.5(a) will, from May 1, 2007 through January 1, 2008, be arbitrarily subject to the MW cap limits. The NYISO requests that the effective date of Section 1.5(a) be the same as the effective date for Part 222. Our recommendation above is to set this date to November 1, 2007; to provide a comparable five-month period between source notification under 1.3(a)(1) and 1.5(a), this would change the 1.3(a)(1) notification date to June 1, 2007.

1.3b) and 1.3c) Derivation of MW Caps

In its June 29, 2006 meeting notes responding to questions posed by stakeholders, the DEC explained the rationale for the MW cap values used:

1. How were the emission estimates from demand response sources presented by the DEC developed? What was the deployed capacity of demand response sources in New York City during on July 30, 2002 (DEC's baseline date)?

DEC: Based upon data received from LIPA and NYPA, the DEC estimated that 89.8 MW of demand response sources operated for six hours on July 30, 2002. We did not have data regarding the deployment of Con Ed/NYISO sources on that day. Assuming that the Con Ed/NYISO deployment was proportional to that of LIPA and NYPA, DEC estimated that the total deployment of demand response sources was 134.7 MW. Using an emission factor of 40 lb NOx/MWh (based upon EPA emission factors), the total NOx emissions from demand response sources in the New York City metropolitan area (NYCMA) on July 30, 2002 was estimated to be 16.2 tons.

Based on slide 10 of the attached NYISO survey of generators participating in the EDRP and SCR programs, although the general population of units surveyed showed an average NOx emissions rate of just under 35 lb/MWh, those units subject to Part 222 based on nameplate rating exhibit a NOx emissions rate of just under 20 lb/MWh, half that used by the DEC in setting the MW caps. While a strict recalculation of the MW caps would therefore double the figures listed in 1.3(b) and 1.3(c), the NYISO recognizes that conservatism is warranted to ensure that emissions remain below 16 tons/day. The NYISO requests that the MW caps in 1.3(b) be increased to:

- (1) effective November 1, 2007: 400.0 megawatts
- (2) effective November 1, 2011: 225.0 megawatts
- (3) effective November 1, 2014: 75.0 megawatts

and the caps in 1.3(c) be increased to:

- (1) effective November 1, 2007: 165.0 megawatts
- (2) effective November 1, 2011: 150.0 megawatts
- (3) effective November 1, 2014: 75.0 megawatts

1.3(d) Thirty Hour Limit and Subsequent DPS Reporting Requirement

The procedures listed under Section 1.3(d)(1) indicate that

At the discretion of the commissioner, operation in excess of the 30 hour annual limit established in this section may be excused if operation of the demand response source occurred during an electric grid reliability emergency certified by DPS.

Making this decision in a post-event timeframe creates enormous risk and liability for program participants, since the proposed rule does not define under what circumstances the commissioner may not excuse such operation. Resources that legitimately may operate will not do so beyond 30 hours if there is the least expectation that the event would not be approved by the DEC.

The NYISO recommends that this section be rewritten as follows

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At the discretion of the commissioner, operation in excess of the 30 hour annual limit established in this section may be excused if operation of the demand response source occurred during an electric grid reliability emergency certified by DPS. The Commissioner, DPS and the NYISO will establish a protocol for making a determination that an electric grid reliability emergency has occurred. The protocol will describe under what circumstances such an emergency will be found to have occurred, the length of such an emergency and will establish appropriate notifications of same among NYISO, DPS and DEC. Upon the establishment of such a protocol, the Commissioner agrees to excuse operation in excess of the 30 hour limit established in this section if the protocol for declaring such an emergency has been followed.