

New York State Department of Environmental Conservation

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Stakeholder Meeting #5

June 29, 2006

Minutes to the Meeting

The following appendices are attached to this document:

- Appendix A: Slides from the DEC's Presentation
- Appendix B: List of Attendees
- Appendix C: Draft Part 222

The meeting came to order at 2:30 pm. John Barnes (NYSDEC) provided an overview of the draft rule. The key points that were addressed were:

- A. Part 222 (Distributed Generation Rule) is divided into two subparts. The first subpart applies to distributed generation sources which are not subject to one of the following New Source Performance Standards (NSPS):

1. 40 CFR 60 Subpart IIII (compression ignition engines)
2. 40 CFR 60 Subpart JJJJ (spark ignition engines)
3. 40 CFR 60 Subpart KKKK (turbines)

Subpart 222-1 would apply to distributed generation sources with a maximum mechanical output of 200 horsepower (hp) or greater in a severe ozone nonattainment area and 400 hp or greater throughout the rest of the state.

Subpart 222-2 is a backstop rule that would be triggered if one (or more) of the aforementioned NSPS rules is stricken by a federal court. The backstop rule is analogous to the January 2005 draft of Part 222.

- B. Owners or operators subject to Subpart 222-1 may classify a distributed generation source one of three ways ("three baskets"):

- Option 1: emergency generator
- Option 2: demand response source
- Option 3: all other applications – subject to the NO_x emission limits set forth in subdivision 222-1.5(a).

- C. A new source category has been added to Part 222 – demand response sources. These sources may be used up to 500 hours per year (or as limited to comply with another

requirement) as emergency generators. In addition, these sources may be used up to 30 hours per year when called upon by a demand response program sponsor.

D. There are four demand response program sponsors:

1. New York Independent System Operator (NYISO)
2. Long Island Power Authority (LIPA)
3. New York Power Authority (NYPA)
4. Consolidated Edison Company (Con Ed)

E. Capacity Caps – Effective January 1, 2007

New York City metropolitan area (less Rockland Co.):	271.9 MW
Upstate (including Rockland Co.):	111.4 MW

The capacity caps are based upon the enrolled capacity in the programs administered by the four program sponsors and are based on the contracted load curtailment, not the nameplate (i.e., maximum output) of the source.

F. The capacity caps would be reduced in 2011 and 2014. Effective January 1, 2014 the capacity caps for the New York City metropolitan area and Upstate would be 50 MW.

G. Distributed generation sources subject to one of the aforementioned NSPS rules would not be counted against the capacity cap nor would they be limited to 30 hours operation per year in response to a call from a program sponsor.

H. Existing demand response sources would be subject to a NO_x emission limit of 9.0 grams per brake horsepower-hour (g/bhp-h) and a particulate matter standard of 0.10 lb/mmBtu or 85% control effective January 1, 2009.

I. Distributed generation sources which are not emergency generators or demand response sources must meet the NO_x emission limits set forth in subdivision 222-1.5(a) effective January 1, 2008. A source that complies with the appropriate NO_x emission limit in subdivision 222-1.5(a) may participate in a demand response program. Such a source would NOT be subject to the capacity cap nor would it be limited to 30 hours operation per year in response to calls from a program sponsor.

J. Demand response sources are not eligible for a variance under Section 222-1.6. Further, the upper bound of a variance for demand response sources subject to Subpart 222-7 is 9.0 g/bhp-h.

K. A brief summary of the emission limits set forth in the three NSPS rules was presented (see attached slides). UPDATE: The EPA Administrator approved the final draft of 40 CFR 60 Subpart IIII on June 29, 2006. It was published in the Federal Register on July 11, 2006. The final version of 40 CFR 60 Subpart KKKK was published in the Federal Register on July 6, 2006.

The following issues were raised/discussed during the Stakeholder Meeting:

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 NO_x/MWh (based upon EPA emission factors), the total NO_x emissions from demand response sources in the New York City metropolitan area (NYCMA) on July 30, 2002 was estimated to be 16.2 tons.

Using the same emission factor, and assuming a six hour event, DEC estimated that 32.6 tons of NO_x would be emitted during a demand response event if all enrolled sources operated. Further, if all of the estimated 1,320 MW capacity of emergency generators in NYC operated during a demand response event, the total NO_x emissions would exceed 158 tons/day.

2. How were the capacity caps developed?

DEC: The caps were based upon the enrolled capacity in the demand response programs administered by the four program sponsors during the summer of 2002.

3. Are the capacity caps based upon enrollment or deployment of demand response sources?

DEC: The capacity caps are based upon enrollment in the demand response programs during the summer of 2002.

4. How will the capacity of demand response sources be allocated to the four program sponsors in 2007? In 2011 and 2014?

DEC: The initial allocation which will take effect on January 1, 2007 is based upon enrollment data from the summer of 2002:

New York City metropolitan area:

NYISO: 58.6 MW

NYPA: 73.1 MW

Con Ed: 54.6 MW

LIPA: 85.6 MW

Upstate:

NYISO: 111.4 MW

The mechanism by which capacity will be allocated to program sponsors in 2011 and 2014 will be set forth in the guidance document that will guide the implementation of the demand response provisions of Part 222. This guidance document is under development and the DEC plans to release it for public comment at the same time the rulemaking package is released for public comment.

5. One commenter requested that the initial and future (2011 and 2014) capacity caps be increased. Further, the commenter suggested that entire capacity of demand response sources be allocated to the NYISO.

DEC: The capacity caps are based upon historical enrollment data and are designed to limit NOx emissions from demand response sources. Therefore, an increase in the 2007 capacity cap cannot be justified. The future caps (2011 and 2014) are set to offset emission increases in the demand response sector from new sources (subject to NSPS rules) enrolled in the demand response programs and to generate emission reductions to help ensure that the NYCMA reaches and remains in attainment with the ozone National Ambient Air Quality Standard.

The capacity caps were developed in consultation with the four program sponsors and the New York State Department of Public Service (DPS). In the opinion of the DEC, the appropriate demand response program sponsors have been identified.

6. How will DEC ensure that the capacity caps are not exceeded?

DEC: A list of the demand response sources and their maximum load curtailment will be maintained on the DEC website. The load curtailment sum may not exceed the capacity caps.

7. Why were the program sponsors not listed in the rule?

DEC: The DEC has authority to regulate sources of air pollution. The four program sponsors are not the owners/operators of demand response sources. The DEC does not have authority to regulate the demand response programs. The four program sponsors are listed along with their allocated capacity in the Regulatory Impact Statement that is part of the Part 222 rulemaking package. In addition, by not listing the program sponsors in the rule, the DEC would not have to revise Part 222 each time there is a change in the list of program sponsors.

8. What mechanism will be used to allow trading of capacity between program sponsors?

DEC: This issue will be addressed in the guidance document that is being developed for implementing the demand response provisions of Part 222.

9. Is there a situation where DEC would not go along with a determination by DPS that an electric grid reliability emergency occurred or was occurring?

DEC: The DEC cannot envision a situation where we would not go along with a determination by DPS regarding an electric grid reliability emergency.

10. Is the DEC open to receiving real time data regarding the use of demand response sources?

DEC: The DEC is willing to discuss this but has reservations regarding whether such a system would be worth the cost to design and implement.

11. Why did the DEC not model Part 222 after the distributed generation rule promulgated by Connecticut?

DEC: Connecticut was a co-chair of the group that developed the Regulatory Assistance Project (RAP) model rule which is the basis of the Connecticut rule. The DEC was not a member of the group that developed the RAP rule.

The DEC conducted a technology review and analysis of the use of distributed generation in New York – specifically with respect to the impact of demand response sources on the DEC’s strategy to bring the NYCMA into attainment with the ozone National Ambient Air Quality Standard. Part 222 is based upon the results of our study.

DEC’s focus in the development of Part 222 has been on existing units, whereas the RAP rule was limited to addressing new sources. New units will be addressed via EPA’s NSPS rules under the DEC’s approach.

12. What is the DEC doing to encourage the use of combined heat and power (CHP) applications?

DEC: Facilities may be eligible for NO_x allowances per Parts 204 and 237 which can then be sold on the open market to offset capital costs incurred to convert from an electrical generation only application to a CHP application.

13. One commenter stated that the emission testing requirements were too onerous for both the regulated community and the DEC.

DEC: Emissions testing is necessary in order for owners and operators to demonstrate compliance with the emission limits set forth in Part 222. DEC has incorporated provisions into Part 222 to minimize the burden to the regulated community and to the DEC:

1. The emission test methods are specified in the rule. If these methods will be used during an emissions test, written protocols do not need to be submitted to the DEC unless specifically requested by the regional office.
2. Emission testing is required every five years or 15,000 hours of operation, whichever is later. In the cases of demand response sources, only one emissions test would be required since these sources may operate for no more than 530 hours per year.

14. One commenter requested a clarification regarding the prohibition of routine testing and maintenance in the afternoons during the ozone season.

DEC: The prohibition on routine maintenance and testing between the hours of 1:00 pm and 8:00 pm during the period of May 1 through October 15 of each year does not apply to installation-related operation of an engine. Facilities generally operate an emergency generator an hour each week to ensure that it is operating properly and will operate when an emergency arises. Under Part 222, facilities

would not be allowed to conduct this weekly test during the hours referenced above.

15. One commenter inquired if the classification of a source (i.e., the “three baskets” concept referenced above in Item B) could be changed after March 31, 2007.

DEC: A classification may be changed provided that the source complies with all applicable standards. In addition, a source may be reclassified from an emergency generator to a demand response source as long as the capacity cap is not exceeded.

16. A few commenters requested that the DEC collaborate with stakeholders as we finalize the rulemaking package.

DEC: The purpose of the stakeholder process that has been used in the development of Part 222 is to solicit input from stakeholders. Input from stakeholders has been given consideration by DEC and we appreciate the input that stakeholders have provided. The stakeholder process is not a forum for negotiating the specific provisions of the rule.

17. Is there a deadline for submitting written comments regarding the June 9, 2006 draft of Part 222?

DEC: There is no formal deadline. Comments submitted, written or oral, will be considered by the DEC as we move forward with the rulemaking process.

18. When will the formal public comment period commence?

DEC: The Governor’s Office of Regulatory Reform (GORR) must approve the rulemaking package before it can be formally released for public comment. The DEC plans to submit the rulemaking package to GORR within the next month or so.