

New York State Department of Environmental Conservation
60 Wolf Road, Room 608, Albany, New York 12233-1500



Michael D. Zagata
Commissioner

June 1, 1995

G.S. Peter Bergen, Esq.
LeBoeuf, Lamb, Greene & MacRae
125 West 55th Street
New York, NY 10019-5389

Re: Declaratory Ruling #19-09 on 6 NYCRR §227-2.5(b)
for the New York Power Pool

Dear Mr. Bergen:

Pursuant to 6 NYCRR Part 619, the Power Pool has submitted a complete petition for a ruling by the Department on whether 6 NYCRR §227-2.5(b) can be interpreted to apply to an emergency in the interconnected electric bulk power network.

Statement of Facts

The New York Power Pool (Pool) is responsible for assuring the reliability of New York's interconnected bulk electric power network. It also acts to assure that electric power generation is dispatched throughout New York State as economically as possible, consistent with environmental considerations. The Pool is made up of eight member systems:

- Central Hudson Gas & Electric Corporation
- Consolidated Edison Company of New York, Inc.
- Long Island Lighting Company
- New York Power Authority
- New York State Electric and Gas Company
- Niagara Mohawk Power Corporation
- Orange and Rockland Utilities, Inc.
- Rochester Gas and Electric Corporation

The Pool is interconnected with four neighboring power pools and integrated systems. These are the Pennsylvania-New Jersey-Maryland (PJM) Power Pool, the New England Power Pool (NEPOOL), Ontario Hydro, and Hydro Quebec. Through these pools and systems, NYPP is interconnected with other bulk power networks in the United States and Canada. The Pool is responsible for supporting the neighboring bulk electric power systems, and in return, may call

upon its neighboring systems for support. Mutual support is a key element in attaining and maintaining system reliability, and is in fact required by federal law [see Federal Power Act, §202 (16 U.S.C.A. §824a (a) which imposes a duty on FERC to promote and encourage interconnection and coordination of electric facilities].

The Pool's goal is to achieve 100% reliability in the supply of electric power throughout New York State and to assist neighboring pools and systems in achieving 100% reliability in their regions. This, among other things, is accomplished by the Pool system members entering into the Pool Agreement. Under the terms of the Pool Agreement, any party, when called upon to do so, must supply emergency energy to any other party requiring such service, giving due regard to each party's responsibility for the supply of its own load, as well as its cooperative responsibility to other parties. Member systems are obligated under the Pool Agreement to support each other and neighboring systems under emergency conditions in order to protect the overall reliability of the power supply.

The Pool is responsible for anticipating and planning for unexpected events in order to provide 100% reliability in supply to all electric customers in the Pool's service area and the neighboring Pool's service area. When an emergency¹ happens, power supply must be adjusted quickly to avoid power interruptions. Pool dispatchers have the authority to order member systems to increase power generation and operate other facilities, as necessary to support other member systems or neighboring power pools to prevent electric power supply interruptions. Pool dispatchers may also require load shedding (disconnecting electric service) in some areas to avoid total collapse of the interconnected system.

Issue

Pursuant to §§182(b)(2) and 182(f) of the Clean Air Act, as amended in 1990 [42 U.S.C. §7511a (b)(2) and (f)], major sources of oxides of nitrogen are required to implement reasonably available control technology (RACT) by May 31, 1995. In order to comply with

¹Emergency events cited by the Pool include the prolonged cold weather in January 1994, which prevented fuel deliveries to generating units operated by members of the Pennsylvania-New Jersey-Maryland (PJM) system. This forced PJM to institute rolling blackouts in the Washington D.C., Maryland, Pennsylvania and New Jersey and Delaware areas in order to prevent total failure of the PJM grid during a period of unprecedented severe cold weather. Other events include triple lightning strikes on the transmission system in July 1977, which caused New York City to be blacked out for 25 hours. On November 9, 1965, the entire Northeast was blacked out for up to 24 hours following an equipment failure in Canada.

this Clean Air Act requirement, which applies throughout the Northeast, the Department promulgated 6 NYCRR Subpart 227-2 "Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NOx)." All Pool member systems include electric generating units that are major sources of NOx, hence all are subject to Subpart 227-2.

Seven of the eight Pool member systems have chosen to implement NOx RACT through system-wide averaging, pursuant to §227-2.5 (b), which allows individual systems to over control NOx emissions at some generating units and under-control at others, so long as the overall system meets the emission rate or quantity specified in the compliance plan. --

The Department has approved compliance plans using individual system-wide averaging for each of the seven member systems, and these plans address contingencies and emergencies on the individual system. Pursuant to §227-2.5(b)(1) the individual system-wide average emission rate shall be adjusted to account for units that are not in operation as a result of a forced outage. As defined in the regulation, a forced outage is an unplanned component failure that requires the unit to be removed from service immediately, or before the next weekend. It does not include failures attributable to improperly designed equipment, lack of preventative maintenance, careless or improper operation or operator error. Clearly, if an individual system experiences a forced outage in the event of an emergency, the owner or operator is allowed to adjust the emission rate to account for unit(s) that are not in operation, and the individual system will not be considered to have violated the NOx RACT regulation.

The question presented in the Pool's request for a declaratory ruling is whether a forced outage on another system in the Pool or in a neighboring pool would be a basis for adjusting an individual system's average pursuant to §227-2.5(b)(1), in the event that the individual system has to supply energy to the failed system. While §227-2.5(b)(1) does not explicitly state that a forced outage on another system in the Pool or in a neighboring pool can be a basis for adjusting the system-wide emission rate of an individual system, the situation is identical to that addressed by §227-2.5(b)(1).

In both cases, the individual system average may be affected by an increase in emissions attributable to the temporary need to supply power in an emergency. The only question is whether the emergency can be one that affects units outside of the individual member's system. The situation is so remarkably similar to that explicitly addressed by §227-2.5(b)(1) it seems logical to find that it would be covered by this provision in the regulation. The Department's intent in including this provision in the regulation was to provide some flexibility for the system-wide emission rate in the rare event of an emergency. Including this provision in the

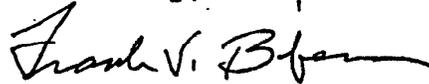
regulation ensures that it is compatible with federal requirements regarding the reliability of the power supply. It is similar to a provision in the Clean Air Act which recognizes that reliability in the bulk power network should not be sacrificed for the sake of strict technical adherence to emission compliance plans during an emergency on the interconnected grid.²

Declaratory Ruling

Therefore, it is the Department' position that, in the event of an emergency on the interconnected electric bulk power network, as declared by the New York Power Pool Senior Pool Dispatcher, one or more member systems will not be deemed to be in violation of their individual system-wide averaging NOx RACT compliance plans if called upon to supply electric energy to the interconnected grid so that they temporarily exceed the NOx emission limits specified in their NOx compliance plans. An "emergency" means conditions under which load shedding is an imminent option in the judgment of the Pool's Senior Pool Dispatcher. In the event of an emergency on the interconnected electric bulk power network as just described, the provisions of §227-2.5(b)(1)(i), (ii) and (iii) would apply.

Please direct any questions to Alison H. Smith at 518-457-6696.

Sincerely,



Frank V. Bifera
Acting General Counsel

cc: Commissioner Zagata
G. Spielmann
Regional Directors
D. Sterman
A. Fossa
J. Higgins
A. Smith

²See §403(d)(2) [42 U.S.C. §7651b (d)(2) which states:

In order to ensure electric reliability, [EPA's SO₂ allowance tracking] regulations shall not prohibit or affect temporary increased and decreases in emissions within utility systems, power pools, or utilities entering into allowance pool agreements, that result from their operations, including emergencies and central dispatch, and such temporary emissions increases and decreases shall not require transfer of allowances among units nor shall it require recordation.