

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway
Albany, New York 12233-1550

In the Matter

-of the-

Proposed Part 222 (Distributed Generation Sources) of
Title 6 of the Official Compilation of Codes, Rules and Regulations of the
State of New York (6 NYCRR) and
proposed revisions to 6 NYCRR Part 200 (General Provisions)

HEARING REPORT

by

_____/s/_____
Daniel P. O'Connell

January 15, 2020

PROCEEDINGS

The New York State Department of Environmental Conservation (the Department) is proposing to adopt a new Part 222 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) titled, *Distributed Generation Sources*, to replace the rule initially adopted on November 1, 2016. The newly proposed rule would apply to demand response and price-responsive generation sources located in the New York City metropolitan area as defined at 6 NYCRR 200.1(a). In addition, the Department has proposed conforming revisions to 6 NYCRR Part 200, *General Provisions*, and 6 NYCRR Subpart 227-2, *Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_x)*, to establish emission standards, monitoring requirements, and record keeping requirements for certain distributed generation (DG) sources in New York State.

DG is the on-site generation of electricity for use at host sites. A wide-range of commercial, institutional, and industrial facilities use DG. Diesel-fired engines are the most common source of DG. From a regulatory perspective, there are two classes of DG sources. They are emergency generators, and economic dispatch.

Emergency generators usually operate when electricity from traditional sources is unavailable, or for facility-related emergencies. Economic dispatch sources have been used to reduce energy costs or to ensure a reliable electricity supply for a facility.

For purposes of the newly proposed 6 NYCRR Part 222, economic dispatch sources include sources enrolled in demand response programs sponsored by either the New York Independent System Operator (NYISO) or transmission utilities, as well as price-responsive generation sources. The definition in the proposed rule would apply to DG sources previously used for emergency purposes when these sources are used outside of an emergency.

As the Department develops strategies to bring the State into attainment with federal national ambient air quality standards (NAAQS) for ozone and its precursor pollutants, using emergency generators in non-emergency situations presents challenges to maintaining air quality. Therefore, a purpose of the rulemaking is to establish emission limits for oxides of nitrogen (NO_x) from economic dispatch sources.

Notice of the proposed rulemakings was published in the *State Register* and the Department's *Environmental Notice Bulletin (ENB)* on September 4, 2019, and posted on the Department's website under proposed regulations available for public comment. In addition, the Department published a copy of the notice in the *Syracuse Post-Standard* on September 3, 2019. On September 4, 2019, the Department published a copy of the notice in the *New York Post*, *Newsday*, the *Albany Times Union*, the *Buffalo News*, the *Glens Falls Post Star*, and the *Rochester Democrat and Chronicle*. The deadline for written comments on the proposed rule was November 25, 2019.

The Department held two public hearing sessions. The first hearing session was held at 11:00 a.m. on November 12, 2019, at the Department's office at 625 Broadway, Albany, New York, before Administrative Law Judge (ALJ) Daniel P. O'Connell. Ten people attended the

public hearing session in Albany. In addition to a statement made by Department staff, Matt Cinadr commented.

The second hearing session was held at 2:00 p.m. on November 20, 2019, at the Department's Region 2 office at 1 Hunters Point Plaza in Long Island City, New York, before ALJ O'Connell. Eight people attended the second public hearing session. In addition to a statement made by Department staff, three people commented.

November 12, 2019

John Barnes, an Environmental Engineer with the Division of Air Resources, spoke at the Albany hearing session regarding the proposed 6 NYCRR Part 222 and the related revisions to 6 NYCRR Part 200. Mr. Barnes explained, among other things, that the Department initially adopted Part 222 on November 1, 2016. On March 1, 2017, however, the rule was challenged. Subsequently, the Department suspended the implementation of the initially proposed version of Part 222, and agreed to promulgate a new rule. The newly proposed rule is the subject of these public statement sessions, and a public comment period.

The proposed rule would apply to economic dispatch sources, as defined in 6 NYCRR Part 222, with output ratings of 200 horsepower or greater, in the New York City metropolitan area. Economic dispatch sources would be required to meet control requirements by May 1, 2020, with additional requirements taking effect on May 1, 2025. The proposed rule also sets forth certain monitoring, maintenance, and recordkeeping requirements for economic dispatch sources.

Mr. Barnes concluded his comments by reiterating the November 25, 2019 deadline for filing public comments, and outlined the methods for filing comments by either regular mail or email.

Matt Cinadr is a professional engineer, and a power system specialist from E³. Mr. Cinadr's work experiences also include a lengthy term of employment with the General Electric Company, among others. On an annual basis, Mr. Cinadr noted that DG sources generally operate for a few hours. He noted further that when DG sources are used, power system operators have nearly exhausted their available options.

Mr. Cinadr said that power system operators rely on DG sources to prevent power outages. Mr. Cinadr observed that during summer heat waves, Con Edison relies on DG sources to avoid widespread power outages, and to reduce impacts from power outages when they occur.

According to Mr. Cinadr, the most common fuel source for DG sources is diesel fuel oil. Mr. Cinadr acknowledged that natural gas would be a cleaner fuel. However, the distribution of natural gas is limited by the current network of pipelines, and upgrades to DG sources would be needed to switch to natural gas. Mr. Cinadr said there is a movement to de-carbonize the electric grid system, and noted that the transition will not be as quick as some would expect.

With respect to the newly proposed rule, Mr. Cinadr recommended extending the compliance dates proposed in 6 NYCRR 222.3 (Notification of Applicability) and 222.4 (Control Requirements) from 2020 to 2022. In addition, Mr. Cinadr recommended that the Department further clarify the rule with respect to the notice required when a DG source changes from an emergency generation source to an economic dispatch source (*see* 6 NYCRR 222.3).

November 20, 2019

Cicily Nirappel, an Environmental Engineer with the Division of Air Resources, read the statement that Mr. Barnes offered at the November 12, 2019 hearing session. Ms. Nirappel concluded her comments by reiterating the November 25, 2019 deadline for filing public comments, and outlining the methods for filing comments by either regular mail or email.

Robert LoPinto is a professional engineer from Walden Environmental Engineering. Mr. LoPinto offered the following three comments. First, referring to proposed 6 NYCRR 222.3 (Notification of Applicability), Mr. LoPinto requested clarification that only the DG sources that operate as economic dispatch sources (*see* 6 NYCRR 222.2[b][7]) would need either a registration certificate, or a permit from the Department. Based on the language of proposed 6 NYCRR 222.3, it appears that the notification requirements would not apply to emergency generators, according to Mr. LoPinto.

Second, a proposed definition of the term “economic dispatch source” is provided at 6 NYCRR 222.2(b)(7). The proposed definition would expressly exclude DG sources that “provide electricity to power equipment or structures not served by the distribution utilities.” Mr. LoPinto observed that the phrase “not served” is not defined, and said that the phrase may be interpreted differently. Mr. LoPinto inquired whether the phrase means: (1) currently no electric utility serves the facility regardless of whether electric service is available; (2) the electric utility will not or cannot economically provide service; (3) the electric utility will not provide service unless the facility owner pays an installation fee; or (4) the currently-supplied electrical service is less than what is needed by the facility.

Mr. LoPinto’s third comment relates to proposed 6 NYCRR 222.3 (Notification of Applicability) and proposed 6 NYCRR 222.5 (Emissions Testing). Mr. LoPinto inquired what would be the classification of a generator that provides electricity to a facility on a full-time basis that also receives electric utility service. According to Mr. LoPinto, such a generator would not be an economic dispatch source, a demand response source, or a price-responsive generation source. Under such circumstances, Mr. LoPinto concluded that the generator would not be required to obtain either an air registration or permit pursuant to 6 NYCRR 222.3, or perform emission testing pursuant to 6 NYCRR 222.5.

Craig Gruber is the general manager from Innoventive Power, LLC. Mr. Gruber explained that Innoventive Power is a curtailment service provider, and aggregator for customers enrolled in demand-response programs sponsored by the New York Independent System Operator (NYISO) and various distribution utilities throughout the New York metropolitan area, as defined in the proposed new rule. Innoventive Power favors the applicability of the proposed regulations to the New York City metropolitan area.

Mr. Gruber noted that proposed 6 NYCRR 222.3 would require the owner or operator of a DG source who wants to operate as an economic dispatch source to have a registration or permit, and to notify the Department by March 15, 2020. Mr. Gruber observed that the proposed rule does not provide guidance about what the owner or operator should do if the owner wants to operate as an economic dispatch source subsequent to the March 15, 2020 notification deadline. Without knowing the Department's rationale for the notification deadline, Mr. Gruber suggested that the proposed rule should be modified to remove the March 15, 2020 deadline, while retaining the notification requirement.

The proposed rule would require compliance with emission limits by May 1, 2020 (*see* 6 NYCRR 222.4). Given the number of sources with model years that predate 2000 and which have emission rates in excess of 2.96 pounds per megawatt-hour, and assuming an effective date of the proposed rule would be early 2020, Mr. Gruber said that the May 1, 2020 compliance date would not provide sufficient time for sources to come into compliance with the proposed NOx emission limits outlined in 6 NYCRR 222.4. Mr. Gruber recommended that the compliance date be extended to May 1, 2021.

Mr. Gruber recommended that the language of the proposed rule should reflect the New York City Department of Environmental Protection (NYCDEP) emission limits that currently apply to compression-emission engines. In the alternative, Mr. Gruber recommended that proposed 6 NYCRR 222.4(a)(5) should be amended to allow for rich-burn engines that are model year 2000 or newer and which operate as economic dispatch sources until the 2025 compliance date. Mr. Gruber noted that the NYCDEP regulations do not apply to engines currently defined as emergency engines.

Mr. Gruber noted further that the electric utilities in the NYC metropolitan area sponsor distributed load-relief programs (DLRP). According to Mr. Gruber, the largest DLRP is in Con Edison's territory, which is designed to address local network contingencies. DLRP activations occur whenever the next contingency in an isolated network would result in either outages to thousands of electricity customers, or an overload of equipment.

In conclusion, Mr. Gruber observed that the transformation of New York's electric grid is happening quickly, with an emphasis on decarbonization. Reliance on renewable and intermittent sources of power is increasing, and the effects of these changes on the reliability of the electric grid are not known. However, the DG sources that would be regulated by the newly proposed rule have played, and are expected to continue to play, an integral part in maintaining reliability for rate payers and the critical infrastructure that serves them. Mr. Gruber recommended that care should be taken when regulating DG sources because they typically operate as a last resort before rolling or systemwide outages occur. In Mr. Gruber's view, such circumstances are some of the worst types of environmental and economic disasters.

David Ahrens is from Energy Spectrum, which is a curtailment service provider located in Brooklyn. Mr. Ahrens and Energy Spectrum have been involved with prior versions of the newly proposed rule for over a decade and have worked with various types of DG resources for a similar period.

Mr. Ahrens supports the proposed upgrade requirements, but said the May 1, 2020 deadline would not provide sufficient time for the required upgrades. Mr. Ahrens recommended an extension to 2022. Mr. Ahrens explained that the logics associated with the replacement of existing generators include, for example, engineering alternative designs, issuing bids for contracts, obtaining permits, securing street closures, and assembling equipment such as high-reach cranes to switch out existing DG sources for new generators. These tasks cannot be accomplished in a few months, according to Mr. Ahrens.

The second item that Mr. Ahrens mentioned is that existing DG sources are used sparingly, and their purpose is generally to prevent outages. Mr. Ahrens said that preventing outages is very important and should be taken into consideration when the Department develops regulations, such as the proposed. According to Mr. Ahrens, DG resources contribute little NOx pollution under such circumstances. As part of his comments, Mr. Ahrens referred to two instances when DG generation sources were used this summer. The first was on June 13, 2019, in the 42nd Street area of Manhattan, where over 72,000 customers were without power from 6:47 p.m. to midnight. The second outage occurred on July 21, 2019, and was a planned event where 53,000 customers were without electricity due to heat and high usage. With respect to the second outage, Mr. Ahrens said that Con Edison made a preemptive move to take those customers in southeast Brooklyn out of service to prevent vital equipment from being damaged and to facilitate the quick restoration of power.

Mr. Ahrens reiterated the comments made by Mr. Gruber with respect to the modernization of the power grid and the growing reliance on renewable generating sources. Due to the intermittent nature of renewable generating sources, Mr. Ahrens noted, however, that DG sources would become more important in maintaining reliability and should not be eliminated prematurely.

Mr. Ahrens noted that moratoriums on natural gas pipelines in the New York City metropolitan area have created uncertainty in the market and destabilized natural gas prices. As a result, projects that would switch DG sources from diesel to natural gas have been delayed. According to Mr. Ahrens these circumstances provide further justification for extending compliance deadlines past May 2020. Mr. Ahrens noted that DG replacements would resume after the moratoriums are settled, and natural gas prices readjust and stabilize.

Finally, Mr. Ahrens reiterated Mr. Gruber's comments related to the notification requirements proposed at 6 NYCRR 222.3. Mr. Ahrens recommended that the Department clarify the procedures that would apply to new economic dispatch resources that begin operations after March 15, 2020, but had not submitted written notices to the Department prior to March 15, 2020.

The public comment period closed on November 25, 2019.