



December 23, 2009

VIA U.S. FIRST CLASS AND ELECTRONIC MAIL

Scott Griffin
New York State Department of Environmental Conservation
Division of Air Resources
625 Broadway, 2nd Floor
Albany, New York 12223-3251

Subject: Comments of the New York State Reliability Council on Proposed Part 249

Dear Mr. Griffin:

Attached please find the Comments of the New York State Reliability Council on the New York State Department of Environmental Conservation Proposed Part 249 Best Available Retrofit Technology (BART) and Part 200 General Provisions. Please contact me at (518) 626-9000 or at pgioia@dl.com if you have any questions concerning these comments.

Very truly yours,

A handwritten signature in black ink that reads "Paul L. Gioia". The signature is written in a cursive style with a large, stylized "P" and "G".

Paul L. Gioia
Counsel

New York State Reliability Council

December 23, 2009

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
PROPOSED PART 249, BEST AVAILABLE RETROFIT TECHNOLOGY AND
PART 200, GENERAL PROVISIONS**

**COMMENTS SUBMITTED ON BEHALF OF
THE NEW YORK STATE RELIABILITY COUNCIL**

I. INTRODUCTION

The New York State Reliability Council (NYSRC) was approved by the Federal Energy Regulatory Commission in 1998.¹ The NYSRC is assigned specified responsibilities related to the maintenance of electric system reliability in New York State (the New York Control Area). These responsibilities include the promulgation of reliability rules that may be more specific or more stringent than the reliability standards and criteria adopted by the Northeast Power Coordinating Council or the North American Electric Reliability Council, in order to meet the special reliability requirements of the New York Control Area. The NYSC's reliability rules establish standards that must be complied with by the New York Independent System Operator (NYISO) in its operation of the New York State bulk power system, and by all entities that participate in the NYISO's electricity markets. The NYSRC also adopts the annual statewide installed reserve margin for the New York Control Area, to ensure that resource adequacy criteria are met and that sufficient resources are available to meet New York State's peak load electricity requirements.

¹ Central Hudson Gas & Electric Corp., 83 FERC ¶ 61,352 (1998).

II. COMMENTS

The NYSRC submits these comments in support of the following recommendations of the NYISO:

1. The proposed Best Available Retrofit Technology (BART) regulations should not be adopted as a final rule until the results of the NYISO's 2010 Reliability Needs Assessment, including an analysis of the impact of the BART regulations on bulk power system reliability, becomes available;
2. The BART regulations should provide for compliance schedules that give due consideration to maintaining bulk power system reliability during their implementation; and
3. Because the proposed BART regulations may affect bulk power system reliability, the relevant state agencies, including Department of Environmental Conservation (DEC), the New York Department of Public Service (DPS), and the New York State Energy Research and Development Authority (NYSERDA) should confer on the potential impact of the BART regulations, along with other environmental initiatives, on the bulk power system.

As the NYISO explains in its comments, the NYISO conducts a Comprehensive Reliability Planning Process (CRPP) including a Reliability Needs Assessment (RNA), for the New York bulk power system. The basic objective of the CRPP is to identify potential reliability needs over a ten year planning horizon, and to ensure that those needs are met in a timely matter either through the voluntary actions of market participants or regulated projects approved by the state and federal regulators. In order to determine

whether, and when, action must be taken to ensure that the New York bulk power system will be operated in compliance with all applicable reliability criteria, the NYISO conducts a number of studies, including studies of the potential reliability impacts of proposed environmental regulations.

In preparing its 2009 RNA, the NYISO did not have an opportunity to study the potential impact of the proposed BART regulations on the reliability of the New York bulk power system. The NYISO sets forth in its comments the various factors that indicate that there is a potential that the BART regulations could have a significant impact on bulk power system reliability, particularly in Southeastern New York, including New York City and Long Island. Consequently, the NYISO is recommending that the DEC not adopt the BART regulations as a final rule until the NYISO has completed its 2010 RNA, including an analysis of the potential impact of the BART regulations on bulk power system reliability.

The NYSRC has taken no position with respect to the merits of the proposed BART regulations, or any other environmental initiative. However, the NYSRC does have a strong interest in having state policymaking entities, such as DEC, consider the potential impacts of proposed regulations on this state's bulk power system, and taking those potential impacts into consideration in the development and implementation of the regulations in order to avoid or minimize negative impacts on electric system reliability.

The State of New York has a strong interest in both protecting the environment and protecting the reliability of its bulk power system. The NYSRC believes that the NYISO's recommendations, including its recommendation that the BART regulations not be adopted as a final rule until the NYISO can complete its 2010 RNA and a study of the

potential reliability impacts of the proposed regulations, are prudent and should be adopted. The 2010 RNA will provide important and relevant information that should be considered by DEC, in consultation with other relevant state agencies, prior to making its final determinations with respect to the BART regulations and how and when they should be implemented.

III. CONCLUSION

The NYSRC appreciates DEC's consideration of these comments and respectfully requests that the DEC accept the recommendations set forth in the NYISO's comments for the reasons stated herein.

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