

## Revised Regulatory Impact Statement

### Chapter III of Subtitle BB of 9 NYCRR - State Energy Planning Proceeding regulations (repeals and replaces existing Chapter III of Subtitle BB of 9 NYCRR)

#### 1. Statutory Authority

The statutory authority for these regulations is Section 6 of the Energy Law. In September 2009, New York enacted legislation that reinstated Article 6 of the Energy Law (see Chapter 433 of the Laws of 2009). The legislation establishes an Energy Planning Board (“Board”), requires the Board to adopt a State Energy Plan (“Plan”) every four years, and outlines the conduct of the state energy planning proceedings. The Plan is designed to provide guidance for energy-related decisions to be made by the public and private sectors within New York State. Section 6-102(4) empowers the Board to adopt rules and regulations “as necessary and appropriate” to implement the legislation.

Chapter 195 of the Laws of 2011 enacted minor amendments to the statute, in order to change the composition of the Board and streamline its operations. Specifically, as those statutory changes relate to the regulations:

- Section 6-106 was amended to require at least three public hearings on the Draft State Energy Plan in each of the two regions defined in §6-102; section 7848.2 of the regulations has been changed accordingly.
- Section 6-106(3)(e) now allows the Board to require a single comprehensive submission of required information from industry or trade groups of utilities and major energy suppliers, rather than individual submissions from their members; sections 7856.1 and 7856.2 have been revised accordingly.
- Section §6-106(6) was amended to require the Board to hold public comment hearings prior to adopting an amendment to the energy plan, but to make evidentiary hearings, if requested, discretionary, rather than mandatory; section 7852.3 of the regulations has been revised consistent with this amendment.

The Board consists of thirteen (13) voting members: the President of the New York State Energy Research and Development Authority, who serves as Chair; the Chair of the Public Service Commission; the Commissioner of Environmental Conservation; the President of Empire State Development; the Commissioner of Transportation; the Commissioner of Labor; the Commissioner of Health; the Secretary of State; the Commissioner of Agriculture and Markets; the Commissioner of the Division of Homeland Security and Emergency Services; and a representative appointed by each of the Governor, the Speaker of the Assembly and the Temporary President of the Senate. The presiding officer of the New York Independent System Operator is a nonvoting member of the Board.

Section 6-102(2)(b) of the legislation creates regional planning councils, representing two regions - a Downstate region, consisting of New York City and 8 other downstate counties; and an Upstate region, consisting of the remaining counties of the State. The Governor, temporary president of the Senate and speaker of the assembly each appoint 3 regional planning members per region, for a total of 18 council members. Regional council members may solicit input from

stakeholder interests within their region (e.g. local governments, labor unions, ratepayers, business, trade associations, community organizations), and must transmit a report to the Board containing any recommendations specific to their region “on a schedule determined by the Board to be appropriate for consideration of such report in the development of the draft state energy plan.”

The planning process created by the law is generally similar to the process that existed under the former Article 6 of the Energy Law, as well as the process followed under Governor Paterson’s April 2008 Executive Order,<sup>1</sup> which resulted in issuance of an Energy Plan in December 2009. The first draft of the new plan must be presented for public comment by September 1, 2012 and the final version of such plan must be issued by March 15, 2013.

## 2. Legislative Objectives

Section 6-102(5) of the Energy Law directs that in its consideration and development of policies, programs and other actions, the Board shall be guided by the following goals:

- improving the reliability of the State's energy systems;
- insulating consumers from volatility in market prices;
- reducing the overall cost of energy in the State; and
- minimizing public health and environmental impacts, particularly the environmental impacts related to climate change.

Energy Law section 6-104(2) directs that the Plan include the following: energy demand and supply forecasts, together with an assessment of the ability of existing energy supply sources and transportation and transmission systems to meet future needs; identification and assessment of the costs, risks, benefits, uncertainties and market potential of energy supply source alternatives; emerging trends in supply, price, and demand; an analysis of security issues, considering both natural and human threats to the State’s energy systems; an environmental justice analysis; urban planning/smart growth alternatives to reduce energy/transportation demand; and an inventory of greenhouse gas emissions, as well as strategies for facilitating and accelerating the use of low carbon energy sources and/or carbon mitigation measures.

In developing the Plan, the Board must identify: (1) policies and programs designed to maximize cost-effective energy efficiency and conservation activities to meet projected demand growth, and (2) the most appropriate state agency or authority with the responsibility for implementing or overseeing such prioritized programs or activities. Section 6-102(5) (a) and (b). The Plan must also (1) recommend administrative and legislative actions to implement policies, objectives and strategies identified in the Plan, and (2) include an assessment of the impacts of implementation of the Plan on “economic development, health, safety and welfare, environmental quality, and energy costs for consumers, specifically low-income consumers.” Section 6-104(2)(j) and (k).

The legislation empowers the Board to solicit information from major energy suppliers and other entities sufficient to address the goals and specific components of the Plan identified by the Legislature, as explained above. Section 6-106(3). The statute further empowers the Board to seek “such other information” from major energy suppliers and others “as the Board may, by

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<sup>1</sup> Executive Order No. 2 (April 9, 2008) [http://www.nysenergyplan.com/presentations/EO\\_2.pdf](http://www.nysenergyplan.com/presentations/EO_2.pdf)

regulation, require to carry out the purposes” of the legislation. Section 6-106(3)(a)(x). Additionally, section 6-106(3)(d) empowers the Board to seek “such other information from owners and operators of electric generating power plants as the Board may require to carry out the purposes” of the legislation.

### 3. Needs or Benefits

The regulations outline the conduct of the state energy planning process, in order to ensure that sufficient information is collected to enable the Board to address the goals and objectives identified in the enabling legislation. Specifically, Subchapter A, “General Provisions,” defines key terms, sets forth how the public can access records of the Board, and establishes procedures for the determination of confidential status of information submitted to the Board. Subchapter B, “Procedures,” addresses the filing and service of documents required to be submitted under the regulations, provides for issuance of a draft and final Plan, and governs the conduct of public comment and evidentiary hearings. Subchapter C, “Plans of Major Energy Suppliers,” sets forth information filing requirements of major energy suppliers, defined as any major electricity, natural gas, petroleum, coal or steam supplier; and major biogas, biofuel, and biomass producers or processors. See Section 7841(a)(44). The regulations in turn define “major” with regard to each of those sources of energy.

In addition to the specific information described in Subchapter C, the regulations empower the Board to require the submission by any major energy supplier of any other information the Board deems necessary to meet its obligations under the enabling legislation. See 7857.3 (electricity); 7858.3 (natural gas); 7859.3 (petroleum); 7860 (coal); 7861.5 (steam); 7862.3 (biogas, biofuels, biomass).

### 4. Costs

Recipients of information requests from the Board will obviously incur costs in responding. However, unlike prior state energy planning regulations, which specified dates by which information was required to be submitted to the Board, these proposed regulations state that the Chair of the board will establish a schedule for submission of information requested by the Board. Notably, the regulations direct the Board to “seek to obtain relevant information under this Subchapter C from entities that are members of the Board, including the Bulk System Operator, before requiring filings from major energy suppliers.” Section 7856.2. Thus, for example, the Board will rely on publicly available data for state energy planning analysis work. Examples include the following:

- Annual “Gold Book” Load and Capacity Data, New York Independent System Operator. Provides electricity load and peak demand history and 10-year forecasts at the system level, as well as extensive data for each generating facility in New York, including capacity ratings, generation, location, age, and primary and back-up fuels.
- Annual Energy Outlook, U.S. Energy Information Administration. Provides 25-year forecasts of energy use and prices for all fuels and all sectors for the U.S. and for the Mid-Atlantic region (New York, Pennsylvania, New Jersey, and Delaware), under various scenarios and assumptions, which serve as useful indicators of expectations for New York.

- Five Year Book, New York Department of Public Service. Provides annual data on electricity and gas delivered by each utility, average cost per customer for electricity and gas by utility and customer type, average annual total electricity and gas annual bill by utility and customer type, and cost of electricity and gas to customers by cost components.
- Ambient Air Quality Report, New York State Department of Environmental Conservation, Air Division. Provides annual air quality monitoring data and exceedance data for sulfur dioxide, nitrogen oxides, ozone, carbon monoxide, inhalable particulates, and lead.
- Oil, Gas and Mineral Resources Annual Report, New York State Department of Environmental Conservation, Division of Mineral Resources. Provides data on production and market value of natural gas and oil produced, permits issued, well completions, underground natural gas storage, acreage, reclamation, and enforcement.

Two other documents will be very helpful in developing the Plan. The first is the Reliability Compliance Program Report, issued by the New York State Reliability Council. This report contains extensive recent data on metrics used to measure the reliability of the electric system, including resource adequacy, transmission capability, operating reserves, system protection, system restoration, and compliance with local reliability rules. The second document is the Reliability Needs Assessment, prepared by the New York Independent System Operator. This document provides a long-term reliability assessment of both reserve adequacy and transmission security of the New York Bulk Power System conducted over a 10-year future planning period.

Analysis and information obtained from other State resources and plans, such as the New York State Emergency Management Plan,<sup>2</sup> transportation planning documents, and others will also be integrated into the State Energy Plan, where appropriate.

Additionally, the Division of Homeland Security and Emergency Services (DHSES) was statutorily created in July 2010<sup>3</sup> consolidating five agencies, including the Office of Emergency Management (SEMO). As the Board addresses security issues in the Plan, the Board will tap into the various offices of DHSES (Counter Terrorism, Emergency Management, Fire Prevention and Control, Cyber Security, and Interoperable and Emergency Communications).

Thus, to the extent possible and practicable, the Board will rely on publicly available data in developing the Plan. However, the regulations provide the authorization for the Board to seek the required information from major energy suppliers and/or other entities, and the Board will do so only to the extent that the information is not easily accessible from other sources.

## 5. Paperwork

As explained in the Costs section above, the Board will make every effort to obtain needed information from entities that serve on the Board, as well as various sources of public information. This will significantly reduce paperwork obligations on the part of entities that receive information requests from the Board.

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<sup>2</sup> [http://www.semo.state.ny.us/uploads/2011\\_01\\_NYS%20CEMP\\_Vol\\_02.pdf](http://www.semo.state.ny.us/uploads/2011_01_NYS%20CEMP_Vol_02.pdf)

<sup>3</sup> <http://www.dhSES.ny.gov/about/legislation/documents/Final-Merger-Bill.pdf>

## 6. Local Government Mandates

As noted in the Legislative Objectives section above, the legislation empowers the Board to solicit information from major energy suppliers and other entities sufficient to address the goals and specific components of the Plan identified by the Legislature, Section 6-106(3). Examples of other entities listed in the statute include the following: energy transmission or distribution companies; electric, gas or steam corporations; owners or operators of electric generation facilities; and the like. To the extent a municipality is engaged in one or more of these activities, the Board may request that it submit relevant information. Again, the Board will first make every effort to obtain necessary information from entities that serve on the Board, as well as various sources of public information.

## 7. Duplication

As explained above in the Costs section, the Board will make every effort to obtain relevant information from state agencies that have collected such information in their regulatory or other capacity, rather than request that major energy suppliers and others provide such information to the Board. Additionally, to extent that major energy suppliers or others file information with federal agencies that is relevant to the state's planning process, the Board will make every effort to minimize additional work, e.g. allow copies of federal filings or relevant portions of such filings to be submitted to the Board.

## 8. Alternative Approaches

The Legislative Objectives section sets forth the numerous issues that the Plan must address, as well as the assessments and recommendations that the Board must provide. The Board has determined that the optimal- and indeed the only- means of accomplishing these tasks is to: (1) obtain public data as well as information in the possession of state agencies and other entities on the Board; and (2) when necessary, request information from major energy suppliers and other entities listed in the enabling legislation.

The Board has undertaken stakeholder outreach efforts in the process of developing the Draft Plan. The Board held its first meeting on November 23, 2010, at which time the Board announced that it would be issuing (1) a Draft Scope, and (2) implementing regulations. On March 10, 2011, the Draft Scope was posted on the Board's website (<http://www.nysenergyplan.com/scope.html>), as well as provided directly to a stakeholder list consisting of over 650 entities and individuals. The purpose of the Scope is to broadly define topic areas for development in the Draft Plan, consistent with the enabling legislation. The deadline for written comments on the Draft Scope was April 29, 2011; the Board received over 60 comments. Commencing on March 24, 2011, the Board's staff also began holding meetings with various stakeholder groups to seek input to the Draft Scope and to discuss issues of concern for potential development in the Plan. Stakeholders included state and local government agencies and associations; business, consumer and industrial groups; utilities, energy suppliers, and energy industry groups; large commercial and industrial energy users, environmental and community organizations, clean/renewable energy entities, energy service companies, and workforce development groups. The Board's staff met with representatives from over 70 interest

groups. At the beginning of each meeting, staff identified the goals and requirements set forth in the enabling legislation. In the development of prior state energy plans, many stakeholders have voluntarily submitted industry data and information, and they have indicated an interest in providing data and information to support the upcoming planning process.

#### 9. Federal Standards

The Plan is designed to address the goals identified by the Legislature, e.g. improving the reliability of New York State's energy systems (see section 6-102(5)) and to provide guidance for energy-related decisions to be made by the public and private sectors within the state. The Board does not envision any conflicts with standards established by the federal government in this area.

#### 10. Compliance Schedule

Unlike prior state energy planning regulations, which specified dates by which information was required to be submitted to the Board, these proposed regulations state that the Chair will establish a schedule for submission of information requested by the Board. The Chair will ensure that recipients of information requests are given sufficient time within which to respond.