



**ENVIRONMENTAL
ADVOCATES OF NEW YORK**
YOUR GOVERNMENT WATCHDOG



PACE LAW SCHOOL
P A C E U N I V E R S I T Y

**Pace Energy and
Climate Center**

May 15, 2009

VIA EMAIL (www.NYSEnergyPlan.ny.gov)

Energy Plan Comments
NYSERDA
17 Columbia Circle
Albany, NY 12203-6399

**Re: Comments of Pace Energy and Climate Center and Environmental Advocates
of New York on Interim Report**

On March 31, 2009, the Energy Coordinating Working Group (“ECWG”) issued its Interim Report to the State Energy Planning Board. The Pace Energy and Climate Center (formerly the Pace Energy Project) (“Pace”) and Environmental Advocates of New York (“EA”) hereby submit these comments on the interim Report. Pace and EA each submitted comments on the Draft Scope in July 2008, followed by Supplemental Comments in December 2009 (jointly among Pace, EA and Alliance for Clean Energy New York, Inc. (“ACE NY”). Pace and EA appreciate the opportunity to participate in the development of the 2009 State Energy Plan.

Overview of Response to Interim Report

Overall, the Interim Report is informative, although the picture it provides of the current energy situation in New York is very broad and the document fails to provide any valuable insights into the planning process. There is little in the Interim Report that provides a basis for meaningful comment by would-be participants in the energy planning process who lack access to the draft Issue Briefs and Assessments and the deliberations of the ECWG. In order to provide substantive and detailed suggestions and/or feedback, parties should have the opportunity to analyze and comment on each Issue Brief and Assessment. If those analyses are simply folded into or released with the Draft Energy Plan in July 2009, then the ECWG will have missed a valuable opportunity to receive input regarding assumptions and components of any modeling exercises.

We request that the Issue Briefs and Assessments be made available to the general public well in advance of the release of the Draft Energy Plan, and that parties be provided an opportunity to comment on these integral planning documents prior to the issuance of the Draft Energy Plan. In the absence of a process allowing the analyses underlying the findings in the Draft Energy Plan to be subject to review and comment, we are concerned that findings reached by those analyses will be fully incorporated in the Energy Plan as foregone conclusions, rather than as guidance tools reflecting only the work of a limited team of researchers.

Comments on Specific Issues

1. Reduction in Greenhouse Gas (GHG) Emissions Needs to Drive the Analysis.

The Interim Report identifies the objective of reducing GHG emissions as No. 5 out of five “challenges to be addressed by the Energy Plan” on page 2-1. The “Preliminary Findings” include a statement that “further emission reductions across all sectors of the economy *will likely be necessary* over the planning horizon.”¹ Another preliminary finding states that addressing climate change issues “*suggest[s]* the need to adopt additional carbon reduction strategies over the planning horizon.”² This shallow acknowledgement of climate change issues is in stark contrast to the direction suggested at December 11 meeting of the State Energy Planning Board, which included a presentation by of Peter Iwanowicz stating that “[t]he energy plan is the venue for addressing climate change.” Pace, Environmental Advocates and ACENY strongly supported this direction in our supplemental comments filed on December 19.

The process of developing the State Energy Plan is an opportunity for New York State to reassert itself as a leader on the issue of combating climate change and transitioning to a greener economy. The comprehensive approach identified in Executive Order No. 2 should result in an Energy Plan that can set an example for the rest of the nation on how to reduce GHG emissions while still meeting the energy needs of the state. While there are countless factors to be considered as the Energy Plan is developed, all decisions should be made recognizing that in order to avoid the worst effects of climate change, we need to reduce GHG emissions by at least 80 percent by mid-century. Furthermore, as the reality of doing business in a carbon constrained world is upon us, failing to lend sufficient weight to the cost of carbon in the State’s energy future would result in a flawed end product.

The Interim Report is disappointingly soft on the need to achieve dramatic reductions in GHG emissions to address what Governor Paterson has acknowledged as “the most pressing environmental issue of our time.” As stated in our December 19 supplemental comments, it is essential that energy policy in New York State be developed in the context of achieving what should be a new target: “**80 by 50,**” *i.e.*, an 80% reduction from 1990

¹ Interim Report, p. 2-3 (emphasis added).

² Id., Preliminary Finding No. 2 (emphasis added).

levels of GHG emissions³ by 2050. This change in New York's "business as usual" emissions profile must be initiated without delay, and must also include aggressive short-term and interim targets to ensure that reductions are achieved in a least cost, optimal manner. To state as a "Preliminary Finding" in the Interim Report only that further reductions during the planning horizon "will likely be necessary" suggests a complete lack of awareness on this issue that, thankfully, is belied by New York's track record on climate change issues. As acknowledged in our December 19 supplemental comments, New York State has been a leader in taking action to address climate change. The Interim Report fails to express a continuing commitment to using the State Energy Plan as a venue for addressing climate change issues.

2. The "Single Clean Electricity Program Goal" of "45 by 15."

The Interim Report refers to the "single clean electricity program goal" of 45% by 2015, or "45 by 15"⁴ which combines the energy efficiency objective of "15 by 15" with a Renewable Portfolio Standard ("RPS") of 30% by 2015. (This proposed RPS objective, which represents an increase from the existing 25% by 2013 requirement, is being considered, but has not yet been approved by the Public Service Commission ("PSC").) Thus, it is somewhat misleading to articulate "45 by 15" as official state policy. Moreover, given the pace of administrative processes, it appears unlikely the RPS program will be expanded in time to ensure project development in time to meet this RPS objectives.

Even the "30 by 15" RPS standard, if adopted by the PSC, would not establish a leadership commitment by New York in supporting development of renewable energy. A proper analysis would examine the commitment to renewable resources by reference to the amount of renewable resource development that will be stimulated by compliance with the RPS requirement. While New York's current obligation of 25 percent by 2013 had the appearance of being aggressive when adopted in 2004, in fact it was not; by counting the *existing* large-scale hydroelectric projects toward meeting the obligation, New York started at 19.3 percent, and thus the 25 percent goal represented an increment of less than 6 percent of *new* renewable resources stimulated by the RPS requirement. In terms of capacity *growth* requirements necessary to achieve full compliance with RPS requirements, New York is not even in the top ten states of all the states with RPS requirements. The largest markets, in terms of capacity growth requirements, are projected to be California, Illinois, Minnesota, Texas, New Jersey, and Arizona, each of which would require over 3000 MW of new renewable energy by 2025 to achieve full compliance.⁵ New York ranks eleventh, when measured by new renewable capacity (nameplate MW) needed by 2025. As a proportion of expected statewide retail sales in 2025 to be met by *new* renewable generation, the standing of New York is *even lower*: an

³ It should be noted that in New York, the level of GHG emissions was roughly the same in 2005 as in 1990, so using 2005 as the baseline rather than 1990 would be immaterial.

⁴ Interim Report, p. 2-2, note 3.

⁵ Lawrence Berkeley National Laboratory, RENEWABLE PORTFOLIO STANDARDS IN THE UNITED STATES: A STATUS REPORT WITH DATA THROUGH 2007 (April 2008), p. 15.

uninspired – and uninspiring – *twentieth*.⁶ In short, 25 percent as an RPS standard may have looked good on the surface as an absolute standard, but when it is calculated in a manner that requires only an incremental increase of less than 6 percent in *new* renewable generation, the lack of a meaningful commitment to *new* renewable generation is quite apparent, particularly when compared to the nineteen other states with more aggressive standards. New York should strive to be a leader as measured by standards that are meaningful: how much *new* renewable generation will the RPS requirement stimulate? *At a minimum*, the 25 percent requirement should be increased to 30 percent by 2015, as is being considered by the PSC. Compared to the efforts of other states in recent years to double requirements that were already more aggressive than New York’s in terms of stimulating *new* renewable generation, however, New York will have to do much better if the state wants to assume a leadership role.

Similarly, the “15 by 15” energy efficiency objective is not being implemented on a pace that will likely achieve this goal. We recently learned at a meeting of the New York Independent System Operator (“NYISO”) that for planning purposes, the Reliability Needs Assessment assumes that less than a third of the energy efficiency savings necessary to achieve “15 by 15” will actually materialize. In other words, while the “15 by 15” objective has been on the books since April 2007, based on the progress thus far in actually implementing the programs necessary to achieve that objective, the NYISO assumes that over two-thirds of the savings (specifically, 70%) *will not materialize*.⁷

3. The “Challenges” of Renewable Resources.

Although the discussion of renewable energy in the Interim Report⁸ provides a useful summary of progress in the area to date, the overall tone of the discussion is strongly biased towards the asserted *problems* associated with renewable generation, rather than the *benefits*. The mention of “challenges” associated with development and integration of renewable energy occurs repeatedly, for example. While some of the points raised may be valid, a more accurate assessment would have expanded upon the *benefits* of renewable resources for New York, particularly under a national cap and trade regime that can be expected to impose carbon costs of \$20-\$30/ton.

Similarly, while the Interim Report states that “[s]ignificant potential remains for the development of large-scale wind generation,” there is little discussion of the potential for the development of other renewable resources, such as solar and geothermal. Although we acknowledge the limitations of an Interim Report, a more robust and balanced discussion of renewable resources would have included some discussion of other renewable sources and their benefits. This omission seems particularly odd considering the Governor’s

⁶ Id.

⁷ “The resulting forecast used for the 2009 RNA base case included an adjustment to the 2008 Gold Book econometric forecast that included approximately 30% of the entire EEPS goal.” NYISO 2009 Reliability Needs Assessment, p. 3-3.

⁸ Interim Report, pp. 4-5 to 4-6.

announcement on May 15 of the New York Power Authority (“NYPA”) initiative to conduct a solicitation to develop 100 MW of solar photovoltaic, as discussed below.

4. The Claimed Impact of Carbon Regulation on Reliability.

The Interim Report describes the leadership role of New York in addressing climate change through its participation in the Regional Greenhouse Gas Initiative (“RGGI”).⁹ The Interim Report further acknowledges that the State is “considering” establishing a long-term GHG reduction strategy with an achievable medium-term target, and it is “likely” the State Energy Plan will “recommend policies and programs to achieve near-term reductions that put the State on the pathway necessary to reach long-term mid-century goals.”¹⁰ For the reasons stated above, we strongly support inclusion of an “80 by 50” target in the State Energy Plan, with aggressive short-term and interim targets to ensure that reductions are achieved in a least cost, optimal manner. In other words, the “likely” inclusion of such an element in the State Energy Plan needs to be changed to a “definite.”

The State Energy Plan should also include assurances that New York can achieve a transition to renewable, clean energy sources without jeopardizing the adequacy and reliability of the State’s electricity supply. According to the Interim Report, the electric generation sector is responsible for about 24% of CO₂ emissions in the State. The transition to a carbon-regulated society, where a price is placed on carbon emissions through either a cap and trade regime or a carbon tax, should affect only the *price* of the power supply, not its *reliability*. In other words, “dirty” sources of generation should be priced in a manner that reflects their environmental impacts, which would give “clean” sources of generation a comparative – and proper – advantage.

These assurances in the State Energy Plan are particularly important given the statements attributed to the NYISO suggesting that imposition of a price on carbon emissions could have adverse impacts on reliability. An article in the New York Times on November 8, 2008, for example, made a reference to a position that “imposing hard limits on carbon dioxide emissions could threaten the reliability of the power supply.”¹¹ The article also included an acknowledgement from a representative of the NYISO that such problems could arise in New York due to the State’s participation in RGGI. Although we understand that the NYISO may dispute the accuracy of the statement attributed to it, a presentation from the NYISO Spring 2009 Sector Meetings seems to confirm that, for planning purposes, the NYISO in fact identifies an impact on reliability associated by the imposition of costs on carbon. Included as Attachment A to these comments is a slide from the NYISO presentation with the caption “Reliability Can Be Impacted by CO₂ Cost.” Although Pace and EA vigorously dispute the suggestion that putting a price on carbon could adversely affect electric system reliability, the apparent position of the State’s

⁹ Id., p. 4-6.

¹⁰ Id.

¹¹ Wald, “Report Says Sun and Wind Power Could Threaten Nation’s Electrical Grid,” NY TIMES, November 8, 2008.

grid operator on this issue is something that the ECWG may need to take into account in developing the State Energy Plan.

5. The Role of NYPA.

The Interim Report includes a number of references to the potential role of NYPA as a valuable partner for pursuing the State's energy policy objectives. A "Preliminary Finding" states that NYPA "is a valuable State asset which may provide even greater value through a restructuring of the Authority's economic development programs."¹² Pace and EA would welcome a more active participation by NYPA in pursuing state objectives toward greater implementation of energy efficiency and renewable energy. In this regard, we are encouraged by the announcement on May 15 regarding NYPA's issuance of a Request for Expressions of Interest (RFEI) for the purpose of exploring a public-private partnership for the installation of up to 100 megawatts (MW) of solar photovoltaic (PV) systems, including roof-mounted and ground-mounted PV arrays at municipal facilities, public and private schools, businesses and State agencies throughout New York. NYPA's favorable financial structure and access to capital can be deployed very effectively to advance the objectives in the State Energy Plan to achieve a cleaner energy supply.

Along these same lines, NYPA could play a much greater role in promoting energy efficiency. Under NYPA's existing practices, however, the electric generation resources shared with state agencies and municipalities creates a disincentive for recipients to invest in energy efficiency and combined heat and power (CHP) because the relatively inexpensive electric supply reduces the opportunity for savings. Given the cost differential in tariffed rates, the cost-effectiveness analysis for customers served by NYPA differs from that of customers served by investor-owned utilities. In the case of CHP or DG installations, for example, projects that may be cost-effective under IOU-based rates may not be cost-effective under NYPA rates or, alternatively, there may be imperceptible benefits to displacing NYPA power, given the lack of incentives for NYPA-served customers to do so. Yet if examined under a broader, statewide perspective, it would likely be beneficial to make investments that displace NYPA power to enable such power supplies to be re-deployed elsewhere. As stated in Pace's July 8, 2008 comments on the Draft Scope, the State Energy Plan should include development of programs designed to provide customers served by NYPA with price incentives based on such a statewide analysis and market energy prices rather than the relatively inexpensive cost of NYPA's power supply.

6 Codifying the Energy Planning Process.

In Pace's comments on the Draft Scope, we expressed concern that the State Energy Plan should include strategies for ensuring that this planning process has a serious impact and influence on the involved agencies' decisions and public and private processes, including

¹² Id., p. 2-3.

consideration of legislation and administrative rules.¹³ Given the time and expenditures devoted to this effort by numerous state agencies and dozens of stakeholders, it is essential that the outcome of this process have some durability and impact in New York's energy planning decisions.

In this regard, both houses of the legislature are currently moving Article VI reauthorization legislation that would reinstate the energy planning process in state law. We strongly encourage Governor Paterson and his staff to work with the legislature to the pass and sign this bill without delay. The process already initiated under Executive Order No. 2 should be folded into such a statutory initiative. Further, doing so would correct a considerable weakness in the current energy planning process: Regardless of the value and usefulness of the ultimate product, its implementation requirements are relatively weak. In addition to granting subpoena power and adding a Senate and Assembly representative to the Board, the aforementioned legislation includes stronger language¹⁴ that goes beyond that contained in Executive Order No. 2. As it currently stands, the State Energy Plan, while helping inform policy decisions, would essentially be a guidance document).

Another legislative action relevant to this process is a statewide cap on GHG emissions from all sources. As discussed above, GHG emissions must be reduced by at least 80 percent from current levels by 2050 in order to avoid the most severe impacts of climate change, according to the Intergovernmental Panel on Climate Change. During the current 2009 legislative session, a bill that includes such provisions has passed the Assembly and is moving through committees for a floor vote in the Senate.¹⁵ We strongly urge Governor Paterson to work with the legislature on this policy and sign the bill once it arrives on his desk, as doing so will allow for New York to set the enforceable limits we need to reduce New York's contribution to global warming. Such action would also restore New York's reputation as a leader on climate policy nationwide, as well as add to the momentum for a federal climate policy.

¹³ Section 3(n) of Executive Order No. 2 provides that the Energy Plan must include "recommendations for administrative and legislative actions to implement the policies, objectives, and strategies set forth in the Energy Plan."

¹⁴ A.5877-a/S.2501-a Section 6-104(4)(b): "Any energy-related action or decision of a state agency, board, commission or authority shall be reasonably consistent with the forecasts and policies and long-range energy planning objectives and strategies contained in the plan. . ."

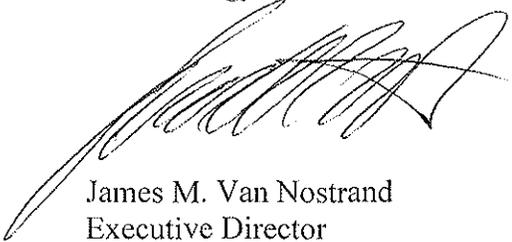
¹⁵ A.7572/S.4315 Global Warming Pollution Control Act. As of May 15, the bill has passed the Assembly and has been reported out of the Senate Environmental Conservation Committee to the Senate Finance Committee.

Conclusion

Pace and EA appreciate the opportunity to submit these comments on the Interim Report. We look forward to working with the ECWG and the State Planning Board in the remaining steps to develop a draft State Energy Plan by July 15, 2009 and a Final 2009 State Energy Plan by October 15, 2009.

Very truly yours,

Pace Energy and Climate Center



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ATTACHMENT A

Reliability Can Be Impacted by CO₂ Cost

- ◆ As CO₂ allowance prices increase, coal units lose economic viability
- ◆ Low gas to coal cost ratios also reduce operating margins for coal units
- ◆ The combination of high CO₂ costs and low natural gas costs may lead to the shutdown of much of the coal capacity in NYCA
- ◆ Without new replacement capacity, reliability criteria would be violated

