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July 11, 2011

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

Submitted electronically at <http://www.nysenergyplan.com/regulations.aspx>

We appreciate the opportunity to submit comments to the Energy Board on the Draft Regulations proposed by NYSERDA in connection with Energy Planning. Largely these regulations are associated with reporting by those in the energy sector.

Thank you for considering our views. Please feel free to contact me for any questions.

Sincerely,

A handwritten signature in black ink that reads "Barbara J. Warren".

Barbara J. Warren
Executive Director

CEC Comments on Draft NYSERDA Regulations related to Energy Planning

There is a new legal framework for Energy Planning under Article 6 of the State Energy Law, which requires more careful consideration of impacts associated with energy use, production and delivery. These regulations are a response to the 2009 Article 6 amendments.

State Energy Law requires:

- reducing the overall costs of energy in the State,
- minimizing health and environmental impacts,
- maximizing cost-effective energy efficiency to meet projected demand growth

As required by the Energy Law, the State Energy Plan must include:

- Security Issues analysis
- Environmental Justice analysis
- Energy costs for Consumers, Low income consumers
- Health, Safety, Welfare
- Environmental Quality

Given the new legal framework, we expected to see an increased focus on security issues, environmental justice, costs particularly for low income consumers, health, safety, welfare, and environmental impacts in these regulations. In general we were disappointed. Despite an occasional sprinkling of some of the words above, there was very little that grounded these words to something substantive in the regulations directed at these objectives.

We think these regulations largely reflect the historical energy planning that has been carried out for years in the state without actually implementing these additional objectives. However, energy planning will involve a board that involves multiple agencies, not just NYSERDA with its energy focus. These regulations should have strengthened environmental reporting, so that Energy Planning can comprehensively and effectively address the above issues.

As a state, we are also engaged in dealing with climate change. Yet there was no attention to the fact that some of the power plants, storage facilities, etc. are potentially vulnerable to severe weather events that may occur as a result of climate change. The reporting framework for these regulations should be used to collect appropriate information, so that adaptation to climate change and emergency planning related to the energy supply can be better coordinated.

Part 7857 Electric Plans

We support reporting for major electricity suppliers individually for each power plant, not collectively for a company, trade association, etc. The state needs to have specific information upon which to make energy forecasts and conduct planning.

However, in general reduced reporting is appropriate for renewable energy sources with no or limited environmental impacts. So for small scale solar and wind installation, or energy storage with no potential for catastrophic accidents, there could be collective reporting by trade associations.

Reporting should include:

Each power plant should report on investments in regular maintenance as well as upgrades such as new equipment and major repairs.

Service providers should also report on investments in their distribution system-- regular maintenance activities and major improvements. Reporting should capture significant outages and the reasons for them.

Investments in transmission and distribution have declined under deregulation. The state should be evaluating the adequacy of transmission and distribution in the state and how investments in this infrastructure will occur in the future. Reporting requirements should be directed at these questions.

It is a significant oversight that these regulations do not include reporting for nuclear reactors, with specific reporting requirements geared to these facilities. Nuclear plants are connected to all of the significant issues in Article 6, particularly security issues and environmental justice. For example, the evacuation of NYC in an Indian Point disaster would pose greater difficulties for low income, EJ communities.

Nuclear Generation Units: We recommend that a set of reporting requirements be included for nuclear generating plants. The items below should be included.

- Date operations began
- Original Rated capacity in MW
- Total MWh for previous year
- Cooling systems, water source and amounts
- Scheduled maintenance shutdowns in days. Description of maintenance activities
- Description of unscheduled maintenance
- Inspection findings: Plant inspections, 3rd party & NRC
- Listing and Description of any Untoward Events
- Storage of Spent Fuel in Pools: Original Design Capacity and Current Storage Quantity
- Storage in Dry Casks: Quantity
- Remaining Storage Capacity
- Leaks & Emissions- Detailed information

Itemized Maintenance Expenditures for previous year

Decommissioning Funds set aside

Part 7863 End-Use Efficiency, Renewable and Emerging Technology Plans

Energy Conservation, Efficiency and Demand Reduction Initiatives are the principal means of reducing the overall costs of energy in the State, minimizing health and environmental impacts, and maximizing cost-effective energy efficiency to meet projected demand growth. They also can be a primary means of addressing low income consumers and disparities in environmental justice communities. Disparities occur in several ways but we will highlight two-- 1) unequal information and access to energy efficiency equipment and 2) an excess of pollution from diverse sources including generating facilities.

We do not agree with the provision of the regulations which has the Board possibly requiring information on this subject from energy suppliers, service companies and others. These programs have been a fundamental part of NYS Energy Plans and now the Climate Action Plan. They are also a primary means of addressing the goals of the Energy Law to minimize environmental impacts and reduce costs.

Funds are collected from ratepayers to support these initiatives. These regulations as a response to the 2009 Article 6 amendments should improve the accountability of service providers to the public in the conduct of these programs. Yet there are NO reporting requirements related to these programs. This state also supposedly decoupled these energy efficiency programs from revenues for service providers yet we have had no reporting on the effectiveness of this mechanism. If we cannot ensure that these largely utility provided programs are actually accomplishing their objectives, we might want to allocate increased funds to non-profit community organizations to carry out the programs.

Reporting on the details and effectiveness of Energy Conservation, Efficiency and Demand Reduction are essential and should be a requirement of these regulations.
Similarly, reporting on Renewable Energy installations should also be a requirement.

Part 7858 Natural Gas Plans

First, we need to state clearly that we oppose lifting the Ban on Hydrofracking. As currently planned by the Governor and the NYS DEC, only certain water supplies deserve protection-- those for cities and larger communities. Small communities and individual homeowners remain threatened by plans for hydrofracking and they are least able to defend themselves from large corporations engaged in drilling. There should be equal protection under the law.

Concerning these regulations for c) In-state Natural Gas Production,

We recommend adding reporting for :

- Identification of all chemical products used as additives in the drilling process and detail about chemical constituents, CAS no., concentrations and toxicological information.
- Total fluids and amount and concentration of compounds remaining in the ground after drilling is completed.
- Quantity of methane released from entire drilling process including valves. The greenhouse gas inventory in the Climate Action Plan notably did not include estimates of methane emissions from production.
- Air monitoring results of drilling process for complete suite of air toxics. Air monitoring should include those compounds used in drilling fluids as well as radionuclides. A new report will soon be released which details significant air toxic emissions from production sites of hydrofracking operations.

- All environmental releases, spills and untoward events, such as fires and explosions.

Fossil Fuels -Petroleum, Coal and Natural Gas

Regulations should include:

- Reporting on status of all Bulk Storage Facilities- inspections and findings, upgrades, remediation of leaks.
- Identification of Major Spills and releases and status of cleanup.
- Complete reporting of all environmental releases, spills and untoward events, above de minimis quantities and insignificant events.
- Details regarding Safety Precautions, Inherently Safe technology and emergency plans to prevent catastrophic incidents.

Biogas & Biomass

We appreciate the fact that the definitions in these regulations do not include solid waste. We believe it should stay that way. Thermal treatment of mixed solid waste is not a renewable energy source. Reuse, recycling, composting and anaerobic digestion are sources of renewable energy-- saving far more energy than thermal treatment could ever generate. Using the waste stream as a source of biomass destroys a preferable opportunity to create a sustainable waste system that saves more energy. Biomass must be sustainably produced and burning paper (solid fuel derived from plant materials) as an example destroys the opportunity to recycle, save energy and get higher value for the paper. Burning green organic materials like food and yard scraps is incredibly inefficient because of the materials' high water content. More importantly, green organic matter is very valuable for improving soils, sequestering carbon, increasing plant health and yields and reducing the use of fossil based fertilizers (there are more benefits than named here).

Part 7862 Biogas, Biofuel and Biomass Plans

Information Requirements should include:

Other fossil fuels are often used and they should be quantified.

The nature of the feedstock is very important and should be specified in reporting.

The use of clean wood waste specified in permitting can quickly be modified by an operator to include hazardous materials; the driver for this is cost. Clean waste wood has lots of ready markets and this increases costs. Only an adequate enforcement program will capture this problem.

Emissions monitoring should be required and reported. Even for clean wood, there are emissions of aldehydes, PAHs and other toxics.

Part 7842 Public Access to Records

Documents produced by contractors for NYSERDA and heavily relied on for policy decisions, such as production of an Energy Plan should be independently subjected to a public comment period. Without any mechanism to correct bias in the viewpoints of particular authors or industry sectors, as well as to correct errors or misstatements of fact, documents become factual records that cannot be challenged in downstream policy discussions such as over the Energy Plan.

Other agencies have such procedures in place and we recommend that NYSERDA correct this problem as NYSERDA plays a critical role in Energy Policy. The State should not be misled by faulty work or uncritical analyses.

Part 7852 Amendments

Section 7852.3 Any determination by the Board to adopt an amendment or to reject it should include a summary of the issue for amendment, public comments received, an evaluation of potential impacts and the final determination in a Findings Statement.