

January 25, 2008

VIA ELECTRONIC MAIL

Hon. Eleanor Stein
Hon. Rudy Stegemoeller
Administrative Law Judges
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

RE: Case 07-M-0548 – Proceeding on Motion of the Commission Regarding
an Energy Efficiency Portfolio Standard

Dear Judges Stein and Stegemoeller,

West Harlem Environmental Justice, Inc. (“WE ACT”) respectfully requests that Your Honors accept this filing for consideration in Proceeding regarding an Energy Efficiency Portfolio Standard. WE ACT wishes to express its serious concerns regarding two major issues that have arisen in the proceedings. First, we highlight the environmental justice issues that have been largely omitted from the discussion and development of plans setting forth energy efficiency portfolio standards. Second, we identify the fundamental flaws in the EPS Administration governance structure proposed by the industry-dominated “Consensus” of proceeding participants. We raise these concerns at this time, because the discussion around the EPS has centered on efficiency – efficiency of services and delivery, and efficiency of program administration. While achieving energy efficiency goals benefits all New Yorkers, it should not add to the already heavy environmental and financial burdens communities of low-income and color must bear.

We thank you for the opportunity to comment on these issues.

Sincerely,

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**ENVIRONMENTAL JUSTICE CONCERNS REGARDING THE ENERGY
EFFICIENCY PORTFOLIO STANDARDS CASE BEFORE THE PUBLIC
SERVICE COMMISSION**

I. Procedural

A. *Identification of Environmental Justice (“EJ”) Communities*

Key issues:

- Composition of low-income people
- Composition of people of color
- Neighborhood-level analysis and onsite surveys rather than census tracts

In the development of the EPS, the Commission should identify environmental justice communities. These are communities of low-income people of color and have historically experienced concentrations of polluting facilities, many of which are power producers, and yet ironically have had poor utilities service. The key issues involved in the identification of environmental justice communities is that neighborhood-level analysis and onsite surveys are necessary because summary data such as census tracts collected by government entities either inadequately describes the demographic make-up of the populations or obscures them by drawing artificial boundaries that swamp the demographic concentrations.

B. *Identification of High-load Areas*

Key issues:

- Industrial and manufacturing facilities that are heavy energy consumers

The Commission should also recognize that environmental justice communities also exist in high-load areas. That is, areas that host a concentration of industrial and manufacturing facilities that are some of the heaviest energy consumers. Efforts to make these facilities operate with more environmental responsibility and stewardship should also make them more energy efficient and vice versa. Furthermore, if alternative power generation strategies such as solar or geothermal energy were exploited in heavily impacted neighborhoods, “peaker” power plants (e.g., plants that operate during peak demands), usually the most environmentally irresponsible and fuel-intensive power plant operations, can be shut down altogether; thus, energy efficiency can be achieved earlier at less cost.

C. *Cumulative Impacts Analysis*

Key issues:

- Analysis of all environmental hazards
- Analysis of community health status
- Analysis of availability of health care facilities and insurance coverage
- Analysis of residents' ability to pay for community and health services

In the determination of the impact that an action will have on an environmental justice community, the Commission should conduct a cumulative impacts analysis in order to understand the full scope of consequences the action will have on the community. The cumulative impacts analysis encompasses the simultaneous consideration of the existing and anticipated environmental hazards, the community health status (and thus its residents' physical and mental vulnerability to additional environmental insults), the availability of health care facilities and insurance coverage, and the ability of residents to pay for health services.

D. *Ensuring EJ Representation in Planning Stages*

Key issues:

- Notification of meetings
- Support for participating in planning process
- Technical assistance for analyzing economic and environmental consequences of government action
- EJ concerns must be prioritized in key decisions – No “ghettoization” of EJ issues

The Commission should require the conveners of the EPS process to provide advance notice of meeting times and location on accessible on the web and at community or village boards so that interested stakeholders can attend and participate in the proceedings. Additionally, the Commission should provide community-based organizations and interested stakeholders with the support necessary to attend meetings, especially when they are in remote locations or far from urban population centers. Finally, to ensure the full participation of environmental community representatives and leaders, the Commission should provide technical assistance or means to obtain technical assistance so that they can analyze fully the economic and environmental consequences decisions resulting from the EPS process.

II. Substantive

A. *The EPS Must be Developed Within a Wider Framework of Comprehensive Energy and Fuel Consumption Plan*

Key issues:

Reduction in Electricity Use Should not Increase Use of Fuels Such as Oil and Diesel
Any Increase in Electricity Generation to Meet Projected Demand Should Prioritize Conservation
Ensure Waste Products of Electricity Generation Will Not Bring More Pollution to Bear on Communities of Color and Low-Income Communities
Pollution Generation should be considered at point of production and delivery
“Clean Energy” and “Renewable Resources” Should be Studied Under a Life Cycle Framework and Not Just Efficiency or Air Pollution Output

The environmental justice community is concerned that the EPS process is not considering a wide enough scope of option for increasing energy efficiency. That is, the EPS elements should prioritize energy conservation measures over production, reduction of energy use overall so that a reduction in electricity use should not increase use of fuels such as oil and diesel, ensure that waste products of electricity will not bring more pollution to communities of color and low-income, “alternative” energy sources should also be studied from a pollution generation perspective that considers both point of production (and impact on the local communities) and delivery, and finally, any consideration of “clean energy” or “renewable resources” should be done under a life cycle framework (that is full consideration of waste products and land-borne pollution) and not just efficiency or air pollution output.

B. *The EPS Must Ensure That Communities of Color and Low-Income Communities Will Not Be Disparately Impacted by Differential Service Delivery or Rates*

Key issues:

Electricity Delivery Systems Should be Developed to Ensure Equity in Service Capacity and Delivery
Infrastructure Maintenance and Capital Improvements Should be Equitably Conducted
Costs Associated With Electricity Generation and Infrastructure Maintenance Should be Equitably Shared by All Consumers

In designing efficiency goals and programmatic offerings, the EPS must ensure that electricity delivery systems that serve communities of color and low-income communities are designed with equity in service capacity, delivery, and costs; that the infrastructure that serves these communities are well maintained and that appropriate capital improvements are made on a regular basis; and that costs associated with electricity generation and infrastructure maintenance are shared equitably by all consumers rather than borne by low-income consumers.

C. *Prioritization of Low-Income Communities and Communities of Color for Residential Weatherization Initiatives*

Key issues:

- Plan for targeting public and low-income housing
- Plan for targeting low-income and affordable housing

Because low-income communities and communities of color typically have the most dilapidated housing and living conditions, leakage of heat in the winter and cold air in the summer often takes place, resulting in very low energy efficiency. Additionally, in many urban settings, the design of low-income and affordable housing does not allow for user control of heating, and sometimes not for cooling, because buildings use central boilers that are set by a remote thermostat. This results in very inefficient energy use because many overheated residents (especially those in higher floors of multiple-family dwellings) must open their windows (even on the coldest nights) to avoid heat stress. The Commission should target these areas and dwellings within them for weatherization improvements and heating, ventilation, and cooling (“HVAC”) retrofits so as to improve their energy efficiency.

D. *Prioritization of Industrial Facilities in Low-Income Communities and Communities of Color for Energy Efficiency Initiatives*

Key issues:

- Plan for targeting municipal waste and sewage treatment facilities
- Plan for targeting other government operations such as bus depots
- Plan for targeting commercial operations that generate pollution

In the urban setting, many residents of environmental justice communities are forced to use air conditioning and other energy-intensive cooling mechanisms even in spring time, because of the air pollution and dust that is produced by irresponsible municipal waste and sewage management facilities, bus depots, and other commercial operations such as power plants and factory stacks. This creates an artificially high demand for electricity when the simplest step to increase efficiency is for the polluting facilities to control their emissions so that neighboring residents can simply open their windows to vent and cool their homes. The Commission should prioritize retrofitting air pollution generating facilities with the appropriate emission control equipment as a very simple measure to increase urban energy efficiency.

E. *Prioritization of Low-Income Communities and Communities of Color for Skills Training and Job-Creation Initiatives*

Key issues:

Plan for targeting small-, woman-, and minority-owned businesses for energy efficiency support

Plan for targeting communities of color for supporting high school programs in technical skills training in the energy and energy efficiency sectors

Plan for targeting community and technical colleges in communities of color for skills training in order to prepare for jobs in the energy and energy efficiency sectors

Plan for targeting universities and graduate centers in communities of color for scholarships, fellowships, and internships in energy efficiency design and engineering in order to prepare for positions in research and development as well jobs in the energy efficiency sectors

As the Commission develops a new energy efficiency plan, it should recognize that additional research and development is necessary to identify technology that would allow us to use our energy more efficiently. Additionally, as new technology and new methods of building and construction are developed, more workers and business people will have to be trained to work with the materials and methods. The Commission should realize the tremendous workforce and business potentials that exist in communities of color and low-income. Accordingly, the EPS should include plans for targeting small, woman- and minority-owned businesses for energy support, skills training centers and apprenticeship programs that target workers of color and low-income, communities of color for supporting high school programs in technical skills training in the energy and energy efficiency sectors, community and technical colleges that serve students of color and low-income for skills training, universities and graduate centers that target students of color and low-income for scholarships, fellowships, and internships in energy efficiency design and engineering in order to prepare for positions in research and development and business positions in the energy efficiency sectors.

CONCERNS REGARDING THE “CONSENSUS” PROPOSAL ON THE GOVERNANCE OF THE EPS ADMINISTRATION

With the increase in energy prices and the depletion of energy resources, WE ACT recognizes the need for and supports the State’s initiative to reduce electricity consumption and increase energy efficiency. However, we must emphasize that the development of plans to increase efficiency of energy production, delivery, or service cannot come with additional burdens to communities of low-income and color, groups that are already disproportionately impacted by pollution generated by the energy sector. For this reason, WE ACT strongly opposes the proposed EPS Administration structure proposed in the “Consensus” Recommendation.

Selection of the Partnership Chairperson – Because the Chairperson has primary responsibility for controlling the Partnership discussion and proceedings through the agenda-setting, it is vital that this person represents the full range of interest involved in the EPS, not just industry interests. Therefore, the Chairperson should be a staff member of the Department of Public Service. Furthermore, the agenda should be through consultation with stakeholders, including, but not limited to, power providers, non-profit organizations, and community-based organizations.

Program Administration – The “Consensus” Recommendation would give power companies the discretion to decide the availability of efficiency programs to customers. The natural tendency of such discretion would be for power producers to create programs that would maximize their own profits, and not necessarily maximize efficiency of use or service to local communities. This problem may become even more pronounced in environmental justice communities where power producers may not find it profitable to offer cost-cutting programs. The EPS must include rules that would protect the interests of environmental justice communities.

The “Consensus” Recommendation would also give NYSERDA an “active role” in the development of state codes and standards for “green” workforce development. A state entity such as NYSERDA or the Department of Public Service should develop such codes and standards, not the regional partnerships.

Strategic Planning – The regional Partnerships may be allowed to develop their own strategic plan for energy efficiency, defining the roles and objectives of industry members. However, non-profit groups, community-based organizations, and low-income providers must be given central roles in the process and their respective roles must be set forth by the Public Service Commission. Furthermore, these enumerated groups must be included in the discussion of how to allocate funding sources, particularly where state funds are involved.

Implementation Plans – The Commission should not allow the regional Partnerships to develop their own energy efficiency goal, the budgets for achieving these goals, the measurement and verification protocols, the program evaluation protocol, or the supporting cost/benefit analyses of these plans. Rather, each Partnership must work with

stakeholders to develop energy efficiency goals and independent auditors to design M&V and program evaluation protocols as well as developing the cost/benefit analyses of the plans.

Importantly, community leaders including non-profit organizations, community-based organization, and other stakeholders must have central roles in the development and implementation of the EPS and its administration in order to ensure complete and thorough review of the possible universe of energy efficiency measures that are available to the State. The “Consensus” Recommendation’s marginalization of the participation of these groups allows power producers and service companies to frame the entire field of issues reviewable by the Public Service Commission and severely limits the programmatic possibilities that can be considered in the discussion.