

New York State Department of Environmental Conservation

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Alexander B. Grannis
Commissioner

January 25, 2008

The Honorable Eleanor Stein
Administrative Law Judge
and
The Honorable Rudy Stegemoeller
Administrative Law Judge
New York State Public Service Commission
Empire State Plaza
Agency Building Three
Albany, New York 12223

Re: Case 07-0548, Proceeding regarding Energy Facility Portfolio Standard (“EPS”)

Dear Judges Stein and Stegemoeller:

On behalf of the New York State Department of Environmental Conservation (“Department”), I submit comments regarding the EPS Administration Consensus Recommendation (“Consensus Recommendation”) submitted by multiple parties on January 11, 2008. Initially, please note that submission of the Consensus Recommendation is a positive step forward; that this many diverse parties have reached common ground evinces precisely the kind of coalescence this proceeding was intended to foster.¹

The Department’s comments focus on the environmental justice (“EJ”) aspects of the Consensus Recommendation. In general terms, the Consensus Recommendation is presented in outline form, making it difficult to evaluate or comment on the depth of detail that will be necessary to bring about the proposal. The Department understands that that is probably the case because of the need to receive other participants’ reactions to the proposal in the short-term, as a tool for further consensus development, and so that the proposal may be sufficiently flexible to be fleshed out during the pending proceedings. *E.g.*, it could be combined with aspects of other proposals or modified to address negotiated alterations. In that spirit, the Department’s comments are also general and forward-looking.

¹ The Department is aware of a recent proposal by Central Hudson, entitled “A State-wide Plan To Achieve the Electric Reduction Targets Of the 15 by 15 Policy”; however Department Staff have not been able to review it in time to submit this comment to the proceeding.

1. The Consensus Recommendation posits that NYSERDA will have “lead responsibility for statewide upstream market transformation initiatives” and for the “State’s green work force development efforts . . .”. (Proposal §2(a).) It also states that “[t]he utilities will have lead responsibility for program delivery for end-use customers within their applicable service territories.” (Proposal §2(b).) These statements do not cross-reference other sections where the role of the EJ community is addressed, so it is hard to tell if these statements contemplate involving the EJ community in market transformation and green workforce initiatives or program delivery to end-use customers. Rather than assume this, it would be favorable if these programs expressly included involvement with respect to low-income and minority communities. Furthermore, where cross-cutting measures are created between NYSERDA and other entities recognized by the Consensus Recommendation, such as the Energy Efficiency Partnerships (Proposal §1), that will support NYSERDA’s market transformation and green work force initiatives, as well as the Utilities’ program delivery, those measures should expressly include EJ community involvement and support.

Proposal §3(a)(iii) concerns “identify[ing] the possible role of energy service companies (“ESCOs”), retailers, financial institutions, large customers, low-income service providers and community-based organizations in meeting the state’s efficiency goals . . .”. While certainly laudable and consistent with the spirit of this proceeding, it is quite general. The Department strongly urges that the role of the EJ community extend well beyond this more general process of identifying possible roles of entities in meeting efficiency goals, to include administrative and managerial aspects of, *e.g.*, the market transformation, green work force and program delivery programs developed in this proceeding.

An additional example is found in the discussion of measurement and verification (“M & V”) protocols (Proposal §3(b)(ii)). The planning or delivery of efficiency programs should incorporate an EJ community role to appropriately assess program success or failure in low income or minority communities.

2. Proposal §4: Does this proposal intend that the Commission would review efficiency program successes or failures specifically occurring in EJ communities? The Department urges that this be included as a topic of discussion in subsequent sessions of this proceeding. This may be a “non-jurisdictional” component of any determination of program administrators’ success in carrying out their respective roles; however, the Commission is best situated to conduct such an evaluation and incorporate such findings into the “living document” aspect of the EPS M & V program.

3. Proposal §5: mention is made of groups associated with the EJ community only in §5(i)(ii) (solicit input on effectiveness of program design and delivery from “not-for-profit entities, low-income service providers and community-based organizations”). However, delivery of EPS programs to and the involvement of the EJ community can be expanded to §5(a)(review and optimize programs), (b) (review costs and consider implications for program success and delivery) and (c) (monitor progress of goals and their allocation among Partnership members). In that regard, the Department urges that the Commission consider forming an EJ Advisory Group that would add its input oversight and evaluation of program design and delivery going forward from the conclusion of this proceeding.

The Department appreciates the opportunity to submit comments on the Consensus Recommendation, and to further participation in these proceedings. I would be glad to discuss this or related topics with your Honors at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Sampson". The signature is stylized with a large initial "D" and a long horizontal stroke.

David Sampson
Associate Counsel

cc.: Active Parties (by list serve)

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