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Via Electronic Submittal

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RE: 6 NYCRR Part 222, Distributed Generation Sources; Proposed Rule

Dear Mr. Barnes:

The Environmental, Health & Safety Communications Panel (EHSCP)<sup>1</sup> is pleased to provide comments on the proposed Nitrogen Oxides (NO<sub>x</sub>) regulation for distributed generation sources, published in the New York Register on December 23, 2015. The EHSCP appreciates this opportunity to provide comments on the proposed rule and hopes that these comments assist New York State Department of Environmental Conservation (NYSDEC) as it proceeds with this rule-making effort.

The EHSCP is a consortium of communications environmental, health, and safety professionals dedicated to promoting employee safety and health, and environmental responsibility throughout the communications industry. The EHSCP strives to provide constructive input in the development and implementation of environmental, health and safety standards and guidelines that affect the varied businesses within the communications industry. As such, the panel maintains an active advocacy role, providing comments and recommendations to federal and state agencies when issues concern the communications industry. It is in this capacity that the EHSCP is submitting these comments. More information regarding the EHSCP may be found at [www.ehscp.org](http://www.ehscp.org).

In New York State, EHSCP member companies operate approximately 1,600 emergency generator systems logistically positioned to provide back-up power to our communication infrastructure in towns throughout the state, many in residential areas. EHSCP supports the goal of the New York State Department of Environmental Conservation (NYSDEC) to help minimize any potential harmful impact that emergency generators could have on the environment. However, EHSCP is concerned that certain aspects of the proposed rule do not provide the intended additional protection to the environment and the public, and are unnecessarily burdensome. For these reasons, EHSCP respectfully requests that the final rule be modified to address these concerns. Where modification of text is suggested it is indented and italicized, additions are underlined and bolded, deletions are struck through and bolded.

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<sup>1</sup> The EHSCP member companies include AT&T, Bell, CenturyLink, Crown Castle, Ericsson, Leducor Technical Services, Level 3 Communications, Nokia, Sprint, T-Mobile, Verizon, and Windstream Communications.

**Part 222.1 APPLICABILITY and Part 222.2 DEFINITIONS**

As proposed, engines participating in emergency demand response (DR) (e.g., the NYISO Special Case Resources (SCR)) or transmission emergency DR (e.g., the ConEd Distribution Load Relief Program (DLRP)) programs would no longer meet the definition of emergency power generating internal combustion engine (“emergency engine”), and would be required to meet rigid emission limits requiring Selective Catalytic Reduction (SCR) as a pollution control for oxides of nitrogen (NOx) emissions. These engines provide necessary backup power in the event of floods, natural or man-made disasters, and grid interruptions. When these emergency generators are enrolled in DR programs, grid operators only dispatch them when there is an immediate threat to the stability of the electric grid. Emergency engines participating in DR programs in New York are rarely required to operate under the program. It is a measure of last resort used to prevent grid failure.

We believe it is better for the environment to allow a subset of emergency generators to run for a short period of time to avoid a blackout, rather than waiting until a blackout occurs causing every available generator to run for hours or days until the electric grid is restored. Clearly, the benefits of running emergency generators pursuant to DR programs would not justify the cost of participating in these programs if the generators would lose the regulatory benefits of being classified as an emergency engine. Since upgrading engines would be cost prohibitive, it is expected that approximately 200 megawatts (MW) of DR participation in New York that relies on such engines will disappear. This could cause severe issues with the New York electric grid. In addition, it is estimated that annual electricity costs will increase by an estimated \$125 to 150 million per year<sup>2</sup>. Thus, the EHSCP believes that this rule change will result in few, if any, emergency generators participating in DR programs. The loss of participating engines will reduce the effectiveness of DR programs in preventing blackouts and may, in fact, result in greatly increased emergency generator usage as a result of the resulting blackouts.

For over three years, the EPA extensively studied engines participating in emergency DR programs and determined that it is not cost effective for emergency engines to install air emission controls due to low usage rates<sup>3</sup>. Indeed, NYSDEC found that SCR is only economically feasible if pre-NSPS engines operate for 1,500 hours or more per year and post-NSPS engines operate for 3,000 hours, or more, per year (see NYS Register, December 23, 2015, pages 6-9). Our engines never come close to operating for these hours and typically operate much less than 500 hours per year, including emergency use to maintain critical communications infrastructure. Thus, according to NYSDEC’s own calculations, the installation of SCR is not economically feasible. The proposed regulations include an alternative compliance option under which individual companies can demonstrate to NYSDEC that it is economically infeasible to meet the applicable emission limit. Since such demonstrations would require a detailed filing with the DEC on a site by site basis and it is unknown how long it will take DEC to make a determination, communications companies will likely not utilize this option. It places a huge burden on our companies plus places an unnecessary burden on NYSDEC to process the requests. A simple solution is for NYSDEC to provide a carve-out for engines participating in

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<sup>2</sup> Consumer Impact Analysis: Provisional & Incremental ACL for SCRs. Tariq N. Niazi, Senior Manager, Consumer Interest Liason. New York Independent System Operator. Joint ICAP and PRL Working Groups. June 24, 2013.

<sup>3</sup> EPA-HQ-OAR-2008-0708- Response to Comments NESHAP and NSPS, January 14, 2013

emergency and transmission emergency DR programs as allowed in the EPA regulations. We understand that in May 2015, the U.S. Court of Appeals for the DC Circuit vacated the emergency DR provisions of the reciprocating engine NESHAP on procedural grounds. The Court granted EPA a Stay of its opinion through May of 2016. EPA is currently considering its next course of action.

We propose the following language for Part 222.1(b):

*(b) Owners and operators of distributed generation sources that are emergency power generating stationary internal combustion engines meeting the conditions stated in subdivision 222.1(a) of this Part, **or emergency stationary internal combustion engines as defined in 40 CFR 60.4219, 40 CFR 60.4248, or 40 CFR 63.6675** are only subject to the following provisions of this Part: 222.3(b), 222.4(b), 222.7(a), 222.7(c) and 222.7(d).*

In addition, we recommend that the proposed regulations have a carve-out in the definition of economic dispatch source to match the U.S. Environmental Protection Agency (EPA) regulations, as per 40 CFR 63 Subpart ZZZZ (RICE NESHAP) and 40 CFR 60 Subparts IIII and JJJJ (NSPS). These regulations allow for 100 hours per engine per year for testing, maintenance, and emergency DR, of which 50 of those hours can be used for transmission emergency DR. We suggest the carve-out be included in the definition of economic dispatch source, in Section 222.2 Definitions, as per the following:

We propose the following language for Part 222.2(3):

*(3) 'Economic dispatch source'. A distributed generation source used to reduce energy costs or ensure a reliable electricity supply for a facility. A distributed generation sources that is not an emergency power generating stationary internal combustion engine as defined in section 200.1 **or is not an emergency stationary internal combustion engine as defined in 40 CFR 60.4219, 40 CFR 60.4248, or 40 CFR 63.6675** is considered to be an economic dispatch source.*

#### PART 222.3(b) GENERAL PROVISIONS

As proposed, this rule would prohibit the maintenance and testing of emergency engines from the hours of 1:00pm to 8:00pm from May 1 through September 30 of each year. This would have significant negative impacts on the day to day operations of EHSCP member's telecommunications operations.

As part of our strategy to reduce the impacts of maintaining our emergency engines on our neighbors, we strive to consider our corporate and residential neighbors and typically schedule maintenance and testing operations of our emergency engines during normal business hours (8:00am to 5:00pm) to avoid generators running in the early morning and evenings. Additionally, routine testing and maintenance schedules typically do not exceed one hour of run-time per month. Restricting maintenance and testing to the early morning and late evening hours would create scheduling and logistical issues for employees and vendors performing these functions. In addition, testing required as a result of repairs made to an emergency engine could be unacceptably delayed, requiring an additional mobilization of the repair crew and causing the emergency engine to remain off-line and not available should a power outage occur.

We propose the following language for Part 222.3(b):

*(b) Maintenance and testing of emergency power generating stationary internal combustion engines may not **exceed one hour of run-time** between the hours of 1:00 pm and 8:00 pm from May 1 through September 30 of each year, **unless such testing is necessary to verify proper operation at the completion of a repair.***

PART 222.4 (b) CONTROL REQUIREMENTS - TUNE-UP

As proposed, each applicable generation source must be tuned-up at least once every 12 months. Based on our experience, this is excessive. Emergency generator systems only operate for disruptions in commercial power, which typically does not exceed single-digit operating hours per year and as described above, for maintenance and testing. Based on this limited run-time, adequate tune-up intervals can be as long as 48 months. We suggest that the frequency of tune-ups for distributed generation sources that meet the definition of Part 200.1(cq) Emergency power generating stationary internal combustion engine be extended to 36-month intervals, or 100 hours of engine run-time, whichever is exceeded first.

We suggest the following proposed language for Part 222.4(b):

*(b) Tune-up. Each distributed generation source must be tuned-up at least once every 12 months; **or every 36 months, if the distributed generation source meets the definition of Part 200.1(cq) Emergency power generating stationary internal combustion engine, and the engine run-time since the last tune-up has not exceeded 100 hours.** The first tune-up must be conducted within 12 months, **or 36 months if the source is an emergency power generating stationary internal combustion engine, after the source commenced operation or within one year of the effective date of this Part, whichever is later***

Additionally, the state should make an exception for required tune-up schedules for an emergency generator system that is operating during an emergency condition, when the 'due-date' for the tune-up is reached. We suggest the state utilize an exception similar to the one allowed by the United States Environmental Protection Agency (EPA) in 40 CFR Part 63, Subpart ZZZZ, [cite to the exact provision in ZZZZ so NYSDEC can copy it] which states: "If an emergency engine is operating during an emergency and it is not possible to shut down the engine in order to perform the management practice requirements on the schedule required in Table 2d of this subpart, or if performing the management practice on the required schedule would otherwise pose an unacceptable risk under federal, state, or local law, the management practice can be delayed until the emergency is over or the unacceptable risk under federal, state, or local law has abated. The management practice should be performed as soon as practicable after the emergency has ended or the unacceptable risk under federal, state, or local law has abated."

We suggest the following be added to the proposed regulation:

***222.4(b)(1) "If an emergency engine is operating during an emergency and it is not possible to shut down the engine in order to perform the management practice requirements on the schedule required in this subpart, or if performing the management practice on the required schedule would otherwise pose an unacceptable***

*risk under federal, state, or local law, the management practice can be delayed until the emergency is over or the unacceptable risk under federal, state, or local law has abated. The management practice should be performed as soon as practicable after the emergency has ended or the unacceptable risk under federal, state, or local law has abated.”*

#### PART 222.7 RECORDKEEPING

As proposed, the rule would require that all recordkeeping required by the regulations be kept on-site for specified periods of time. Unnecessary administrative costs associated with onsite record retention can be greatly reduced without jeopardizing the availability of records or posing environmental harm by allowing businesses with multiple locations to keep files in a central location, provided that copies are available electronically or by facsimile at the local facility upon request. The NYSDEC has already recognized the advantages of allowing for centralized record maintenance under the recently revised petroleum bulk storage rules (6 NYCRR part 613-1.5(a)). We suggest the state revise the proposed language in Part 222.7 (b)–(d) with the following language, copied from Part 613: “*(a) Every facility must maintain all records (in hard copy or electronic format) and make them available to the Department within three business days following the Department’s request.*”

EHSCP also notes that allowing the records to be centralized has some beneficial results. For instance, keeping records in a centralized location greatly reduces the possibility of accidental disturbance of records kept in many local offices through which various employees may pass. Even more importantly, by centralizing the records it becomes far easier for a business to perform audits and assure that the records are, in fact, being properly maintained.

#### Part 222.7(b) EMISSION TESTS

As proposed, the rule would require maintaining emission test results at a facility for ten years from the date of the emission test. Retaining emission records for ten years from the date of the test provides no benefit for the protection of air quality, especially if the distributed generation source has been decommissioned, removed or sold. We suggest that the language be revised to state that records are to be maintained for at least one-year after the date of the last entry or after a distributed generation source has been decommissioned, removed, or sold.

We suggest the following proposed language for Part 222.7(b):

***(b) Emission test results must be must be maintained ~~at the facility for ten years from date of the emission test.~~ (in hard copy or electronic format) and made available to the Department within three business days following the Department’s request. Test results must be kept for at least one year after the last entry or after the distributed generation source is decommissioned, removed, or sold.***

#### Part 222.7(c) Tune-up

As proposed, the rule would require that all recordkeeping required by the regulations be kept on-site for five years after the last entry. Retaining records for five years past the last entry into a maintenance log provides no benefit for the protection of air quality, especially if the distributed generation source has been decommissioned, removed, or sold. We suggest that the language be

revised to state that records are to be maintained for at least one-year after the date of the last entry or after a distributed generation source has been decommissioned, removed, or sold.

We suggest the proposed language in Part 222.7(c) be revised to read:

*(c) Records of tune-ups must be maintained ~~in a bound log book (in hard copy or an electronic format)~~ and made available to the Department within three business days following the Department's request, and must be kept at the facility for at least five-one years after the date of the last entry or after the distributed generation source is decommissioned, removed, or sold. The following information must be ~~contained in the log book~~ retained for each tune-up:*

**Part 222.7(d) Operational Data**

As proposed, the rule would require that operational data is recorded monthly and kept on-site for five years after the last entry.

We suggest the proposed language in Part 222.7(d) be revised to read:

*(d) The following operational data must be recorded for each distributed generation source subject to this Part in a format acceptable to the Department. The data must be recorded monthly and ~~maintained at the facility for five years from the date the data were recorded~~ made available to the Department within three business days following the Department's request. The operational data must be kept for at least one year after the data were recorded or after the distributed generation source is decommissioned, removed or sold.*

Part 222.7(d)(3) as proposed includes a requirement to record electricity generated in megawatt-hours. This may be impossible for many emergency generator systems that were not equipped with gauging that provides this information. Additionally, emergency generator systems typically run automatically and are at unmanned facilities. If a gauge were available, this data could not be recorded unless an operator is onsite during the generator run-time. We suggest removing this requirement, or, minimally, exempting distributed generation systems that meet the definition of Part 200.1(cq) Emergency power generating stationary internal combustion engine.

In conclusion, we ask that state consider our suggestions to the currently proposed language of this rule to allow for the efficient operation of potentially affected emergency generators located within the state.

We would again like to thank the NYSDEC for providing the EHSCP the opportunity to comment on the proposed rules and hope that the NYSDEC finds them useful to this important rule-making effort. If you have any questions, please feel free to contact me at 908.559.3688.

Sincerely,



Gary Schongar

Verizon

Chair, Environmental, Health & Safety Communications Panel

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