



September 20, 2012

Hon. Jaelyn A. Brillling
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

Dear Secretary Brillling,

The Sierra Club, Earthjustice, and Pace Climate and Energy Center, respectfully submit the following letter to the Public Service Commission, and ask that you forward it to the Chairman and Commissioners.

In the Commission's Order of August 16, 2012 in case 12-E-0136 – Petition of Dunkirk Power LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements – the Commission took note of the Sierra Club's request "that an analysis of the need for transmission upgrades be undertaken to protect ratepayers from unjust and unreasonable increases in their rates" for potential retirements at all of New York's coal plants. Given the pending sale of the Danskammer and Roseton facilities, and Central Hudson's public statements about reliability needs related to the facilities¹, our organizations would like to reiterate the Sierra Club's request that an analysis of reliability issues for the potential retirement of the Danskammer and Roseton facilities in particular, and related investment needs, be requested from Central Hudson and the New York Independent Service Operator immediately. If such an analysis has already been conducted, as it appears from Central Hudson's statements, then the Public Service Commission should ensure that the analysis is publicly available.

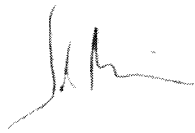
Our organizations also recommend that the Public Service Commission open a docket to determine whether and when it would be appropriate to require Central Hudson to conduct a request for proposals to resolve any reliability needs for potential retirements at these facilities.

¹ <http://www.recordonline.com/apps/pbes.dll/article?AID=/20120912/BIZ/209120315>

SIERRA CLUB

The Sierra Club first raised the potential retirement of these facilities and need for a reliability analysis with the Commission last year in case 10-M-0648. With the pending sale, limited operation due to lower power prices, and requirements to significantly reduce sulfur dioxide and other pollution due to various environmental regulations including the Regional Haze Rule², it is clear that the facilities are likely to be retired or converted to other fuel sources. In order to potentially avoid another costly reliability must run agreement the Public Service Commission should request a reliability analysis immediately and prepare to consider what investments in grid infrastructure may be necessary to ensure reliability if the facilities were to announce retirement.

Sincerely,



Jackson D. Morris
Director of Strategic Engagement
Pace Energy & Climate Center
Pace Law School
744 Broadway Albany, NY 12207



Mark Kresowik
Deputy Director, Eastern Region
Sierra Club's Beyond Coal Campaign
50 F St NW Eighth Floor
Washington, DC 20001



Shannon Fisk
Staff Attorney
Earthjustice
1617 John F. Kennedy Blvd., Suite 1675
Philadelphia, PA 19103

² Congress set as a national goal, the “prevention of any future, and the remedying of any existing, impairment of visibility” resulting from man-made air pollution. 42 U.S.C. § 7491(a)(1); *see also* H.R. Rep. No. 95-294, at 203-04 (1977) (noting that purpose of goal was to protect the “intrinsic beauty and historical and archeological treasures” of certain federally-protected parks and designated wilderness areas). To achieve this goal, Congress directed EPA to issue regulations requiring each State to submit an implementation plan aimed at reducing and eliminating regional haze. *See* 42 U.S.C. § 7491(b)(2). EPA complied with this directive by issuing the Regional Haze Rule, 64 Fed. Reg. 35,714 (July 1, 1999). This Rule requires a State’s implementation plan to include, among other things, a determination of the “best available retrofit technology” (or “BART”) for each facility subject to the Rule. This BART determination is made on a “case-by-case” basis after considering “the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution equipment in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.” 40 C.F.R. §§ 51.308(e)(1)(ii)(A) (identifying factors to be considered), 51.301 (“case-by-case” basis). Last month, the U.S. Environmental Protection Agency promulgated a final rule determining that the Regional Haze Rule applied to Unit 4 of the Danskammer Generating Station and that BART for the unit was as follows: For nitrogen oxides, an emissions limit of 0.12 lb/MMBtu on a 24-hour average during the ozone season (May through September) and a 30-day rolling average the rest of the year; for sulfur dioxide, an emissions limit of 0.09 lb/MMBtu on a 24-hour average; and for particulate matter, an emissions limit of 0.06 lb/MMBtu on a 1-hour average. *See* Final Rule, 77 Fed. Reg. 51,915, 51,917 (Aug.28, 2012).