



SUBMITTED ELECTRONICALLY

May 31, 2023

Robert Kettig, Assistant Director  
Kenneth Ratzman, Assistant Director  
Air, Energy, and Materials Sustainability  
New Jersey Department of Environmental Protection  
401 East State Street  
Trenton, NJ 08625

Mail to: [njclimate@dep.nj.gov](mailto:njclimate@dep.nj.gov)

RE: Rulemaking concept: Clean Energy Compliance Options for Existing Electric Generating Units (EGUs)

Dear Mr. Kettig and Mr. Ratzman:

Clean Energy Group (CEG) is pleased to submit this letter, in partnership with Ironbound Community Corporation, South Ward Environmental Alliance, New School's Tishman Center for Environment and Design, and EmpowerNJ (Food and Water Watch, Don't Gas the Meadowlands Coalition, Environment New Jersey, Clean Water Action, Delaware Riverkeeper Network, and Blue Wave NJ) to provide comments regarding New Jersey Department of Environmental Protection's (NJ DEP) rulemaking concept to allow clean energy compliance options for existing EGUs.

[Clean Energy Group](#) is a national, nonprofit advocacy organization working to advance an equitable and inclusive transition to a clean energy system. Since 1998, CEG has promoted effective clean energy policies, developed new finance tools, and fostered public-private partnerships to advance clean energy markets that will benefit all sectors of society for a just transition. Through policy work as well as its [Phase Out Peakers](#) initiative, CEG has advocated, both in New Jersey and in other states, for the inclusion of behind-the-meter energy storage as a peak demand reducing measure in state energy efficiency plans, as well as for the use of non-combustion alternatives as a reliable and cost-effective alternative to fossil peaker plants.

Clean Energy Group is part of the [PEAK Coalition](#) in New York City, and the Coalition has supported [research](#) that has revealed the hidden financial incentives, called capacity payments, that enable the continued operation of the City's dirty peaker fleet that would otherwise be uneconomic to operate. The Coalition's consultant Strategen found that the owners of the New York City peaker fleet had collected more than \$4.5 billion simply to remain online between 2010 and 2019 (see page 15 of the [linked report](#)). The Coalition then produced a detailed

strategic and policy [roadmap](#) to retire and replace the City's entire fossil peaker fleet (18 plants) with non-combustion alternatives by 2030. When this effort was initiated in 2020, the New York Power Authority (NYPA) and others indicated that this goal was not possible. In 2022, NYPA acknowledged that completely replacing *each* of the Power Authority's six fossil peakers in the City would be possible with battery storage by 2030 and replacement of *all* NYPA's peakers with storage would be possible by 2035 with no negative impact on reliability. Then, early in May 2023, the New York Assembly passed budget [legislation](#) that *requires* the six NYPA peakers to retire by 2030. Several of the non-NYPA peaker fleet have also announced plans to close and/or transition completely to renewables and battery storage, including the nearly 2 gigawatt [Ravenswood](#) facility and Eastern Generation's [peakers](#) at its Astoria (959 megawatts), Gowanus (640 megawatts), and Narrows (352 megawatts) sites. To date, reliability has not been an insurmountable issue in the movement to replace the fleet with non-combustion alternatives.

The May 8, 2023, Final EGU Stakeholder Meeting Presentation, where NJ DEP outlined a rulemaking concept to allow clean energy compliance options that could help EGUs meet the requirements of the Control and Prohibition of Carbon Dioxide Emissions Rule (NJ Carbon Rule), indicated that twelve EGUs at five sites would have difficulty complying with the NJ Carbon Rule. Of note, most of these EGUs have a capacity factor of less than 2 percent. NJ DEP indicated that compliance extensions can be requested if a unit is designated as a Resource Must Run (RMR) unit or if PJM or NYISO has requested that the EGU remain operable for grid reliability. (The units to which these designations apply were not provided. We also do not know what ratepayer-born financial incentives these units collect to remain online.) The clean energy compliance options listed in the presentation included grid-level solar, behind-the-meter solar, energy storage, RNG, hydrogen, fuel cells, as well as an "other" category. NJ DEP then outlined the discussion points that it would like to see for each technology.

Based on CEG's extensive experience in the replacement of fossil peakers with non-combustion alternatives, we would argue that only the first three options are acceptable and feasible. The larger issue is finding a regulatory option that would prevent most of these plants from operating and causing irreparable harm to the communities that surround them, when emissions-free alternatives exist. By allowing these plants to meet the carbon emission requirements, NJ DEP would also be allowing these plants to continue emitting NO<sub>x</sub> and PM<sub>2.5</sub> directly into neighborhoods. While we applaud the intent with respect to carbon, we cannot ignore the fact that localized pollutants would continue unabated.

According to the [US EPA's Power Plants and Neighboring Communities Mapping Tool](#), the Kearney, Sherman, and Linden sites significantly impact communities of color and low-income communities. The Kearney site alone has more than a quarter of a million people (256,529) who live within a three-mile pollution impact radius. Linden has 160,227 people within its three-mile pollution impact radius. Gilbert, Sherman, and Forked River add another 50,897 people, for a total of 467,653 – almost half a million people – who will be required to continue to endure the life-shortening health impacts of these peakers.

The data proving the devastating impact that NO<sub>x</sub> and PM<sub>2.5</sub> have on the body is clear. CEG outlined these health consequences in a report called [The Peaker Problem](#), published last year in partnership with consultant Strategen. Short-term exposure to these localized peaker emissions

can cause wheezing and coughing, shortness of breath, and asthma attacks. Long-term exposure can affect the entire body, causing changes in brain structure and cognitive decline, neurodevelopment disorders such as Parkinson's, heart attacks, strokes, coronary artery disease, blood clots, chronic obstructive pulmonary disease (COPD), lung cancer, kidney disease, metabolic diseases, premature birth, low birth weight, miscarriage, and diminished fertility. This level of harm is aided by the fact that PM<sub>2.5</sub> is much smaller than the alveoli in the lungs, allowing it to cause damage far beyond the respiratory system. Moving away from a pollution source is often not an option for many families, so the responsibility is on the regulator to reduce these life-altering impacts when the opportunity presents itself. And we have that opportunity now.

Solar power and batteries – both at grid scale and distributed, combined and separate – are proven technologies. In California, the 100-megawatt [Oxnard battery facility](#), part of a 195-megawatt aggregated battery portfolio, began operation in 2021, replacing a planned 262-megawatt gas-fired peaker that would have perpetuated pollution in the [surrounding environmental justice community](#). And community choice aggregator East Bay Community Energy successfully shuttered a jet-fueled peaker and replaced it with an [urban battery system](#) and a 1,000 home [virtual power plant](#) (VPP). The VPP was able to deliver 55 megawatt-hours of energy to California's grid during a grid emergency last September. Batteries and batteries combined with solar are proven, reliable non-combustion alternatives. Virtual power plants are [successfully bidding](#) into ISO-New England as capacity resources. Eastern Generation and NYPA will be replacing peakers with grid-scale batteries. And of note, these projects were all announced prior to the Inflation Reduction Act, which will lower the cost of these technologies even more. The EGUs listed in the presentation are called upon very little and would likely be easily replaced with batteries or some combination of non-combustion alternatives.

Given the *known* harms, the *known* clean technologies, and the *known* cost reductions, there is no reason to provide a regulatory option that will allow these fossil plants to continue to operate. One obstacle to retiring these EGUs is the must-run/reliability issue. But we do not know which EGUs have this status and we do not know what financial incentives are accrued by the plant owners as a result of this status, so we cannot provide meaningful comment on this issue other than that the concept sets communities up to become sacrifice zones for the sake of the grid – an unconscionable action, but one that we realize is not intended by NJ DEP. We also do not know how often these units would fire up for maintenance testing or for readiness, even if not called upon. Each of these actions results in localized emissions not reflected in the capacity factor. This proposed rulemaking concept further begs the question as to whether ISO policy and decisions, such as granting RMR status to dirty plants, should take precedence over New Jersey's clean energy goals and mandates.

Given the successful use of battery storage to replace peakers in other locations and the many concerns about air quality expressed above, we would like to request a more robust dialogue between the undersigned organizations and NJ DEP before this rulemaking concept proceeds further. We would like to propose a meeting at which Clean Energy Group can provide a short presentation on the key findings from the NY roadmap and explore interest in conducting a study of this type sponsored by NJ DEP. We would like to discuss the critical questions identified above, such as must-run status and maintenance/readiness firing for the target plants. This type

of open dialogue, with the inclusion of impacted communities and sharing of information, has significantly improved outcomes in neighboring New York, as well as in other communities. We believe this could also be helpful in New Jersey.

Respectfully submitted,

Seth Mullendore, President and Executive Director  
Clean Energy Group

Maria Lopez-Nunez, Deputy Director of Advocacy and Organizing  
Ironbound Community Corporation

Kim Gaddy, Founder and Director  
South Ward Environmental Alliance

Dr. Ana Baptista, Co-Director  
New School's Tishman Center for Environment and Design

Matt Smith, NJ State Director  
Food & Water Watch

Ken Dolsky, Co-Leader  
Don't Gas the Meadowlands Coalition

Amy Goldsmith, State Director  
Clean Water Action

Tracy Carluccio, Deputy Director  
Delaware Riverkeeper Network

Doug O'Malley, Director  
Environment New Jersey

John Reichman, Board Member  
Blue Wave NJ

David Pringle, Steering Committee  
EmpowerNJ

cc: Kenneth Ratzman (Kenneth.ratzman@dep.nj.gov)  
Robert Kettig (Robert.kettig@dep.nj.gov)