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Transmitted via email to 242rggi@gw.dec.state.ny.us

FROM: Northeast Regional Greenhouse Gas Coalition¹

DATE: December 21, 2007

RE: **Comments on Proposed RGGI Regulation (6 NYCRR Part 242)**

Introduction

This memo provides the Northeast Regional Greenhouse Gas Coalition's (GHG Coalition) comments on New York DEC's proposed regulation (6 NYCRR Part 242).

The GHG Coalition members have participated as official stakeholders to the RGGI process since its inception, participating in every RGGI meeting and workshop and submitting consensus recommendations throughout the entire process. See www.ghgcoalition.com/resources for comments submitted to the RGGI process to date.

The GHG Coalition believes that programs to address climate change should be national in scope. The objective of the GHG Coalition throughout the RGGI process has been to provide recommendations so that RGGI could serve as a model for a national program that would have a reasonable likelihood of adoption. Thus, it is essential that the RGGI implementing rules incorporate program elements that can be easily implemented at the national scale. In addition, the regulatory elements of the RGGI program (including implementing regulations at the state level) should either be superseded by or aligned with the national regulatory program so as not to have redundant and possibly conflicting programs.

The GHG Coalition's comments on the NY DEC proposal focus on the following issues:

- 100% auction;
- long term contract set-aside allocation;
- use of the auction revenues; and
- waiver of enforcement.

100% Allowance Auction

The proposed 6 NYCRR Part 242 indicates that NY DEC is proposing to auction nearly 100% of its CO₂ allowances. The GHG Coalition is concerned with the emerging trend in the RGGI states in support of a 100% auction of the state's RGGI CO₂ emissions budget. The regional CO₂ cap is the driver of the greenhouse gas emission reduction benefits of RGGI not the auctioning of allowances.

¹ The GHG Coalition members are BP America, Inc.; Conectiv Energy; Consolidated Edison, Inc.; Constellation Energy; Dominion Energy New England; Public Service Enterprise Group, Inc.; Valero Energy; and Waste Management, Inc.

The GHG Coalition does not support a 100% auction, particularly at the start of the RGGI program in 2009 and especially if non-CO₂ Budget Sources are allowed to participate in the auctions as well. The GHG Coalition does not support a 100% auction for the following reasons:

1. The impacts on allowance prices and electricity markets are unknown;
2. Participation in the auction by non-CO₂ Budget Sources will likely increase uncertainty for CO₂ Budget Sources and increase allowance prices;
3. CO₂ Budget Sources would operate under increased uncertainty;
4. CO₂ Budget Sources in New York State covered by the RGGI Program would be competitively disadvantaged ; and
5. The financial impacts of the RGGI program on companies are potentially greatest under a 100% auction.

As an alternative, the GHG Coalition recommends phasing in the auction coupled with a direct allocation to existing and new CO₂ Budget Sources. The allocation of allowances should be based upon a State defined allowance allocation methodology. Going slowly in transitioning to a substantial auction would permit the auction design to be adjusted if there are problems.

First, the auction should start at a percentage well below 100% in the First Compliance Period (2009-2011). The auction could then increase by a specified percentage in subsequent compliance periods. This phase in should only occur if the comprehensive program review that the RGGI states agreed to in the RGGI MOU concludes that such a phase in is warranted and would not have adverse impacts. This phased auction approach has several advantages including:

- greater probability that allowance prices will be moderate, while at the same time not adversely affecting the regional electricity markets;
- provides a transitional path to implement allowance auctions into cap and trade programs and provides business certainty to CO₂ Budget Sources;
- provides at least a portion of the allowance value to the companies (through a direct allocation), and can reduce the potential increases in electricity imports into the RGGI region; and
- is more realistic and easier to manage for all stakeholders if the auction design isn't "right".

Second, the auction should only be open to CO₂ Budget Sources or their agents, particularly in the First Compliance Period, to prevent undue market speculation at this early stage. Non- CO₂ Budget Sources could participate in the secondary market as well as auctions for future vintage allowances from 2012 onward. This will provide a transition to the significant RGGI auction for the CO₂ Budget Sources.

Third, the remaining allowances should be "allocated" to CO₂ Budget Sources based upon a State defined allowance allocation methodology.

Use of the Auction Revenues

The proposal indicates that NYSERDA will utilize the auction proceeds to fund programs promoting the following:

- energy efficiency;
- renewable or non carbon emitting technologies;
- innovative carbon emissions abatement technologies with significant reduction potential; and
- the administration of the CO₂ Budget Trading Program and the Energy Efficiency and Clean Energy Technology Account.

The GHG Coalition views investments in energy efficiency, renewable, non carbon emitting technologies, and carbon abatement technologies as crucial to the development and deployment of new technologies to reduce CO₂ emissions – but not at the expense of a cost effective CO₂ program. By retaining the MOU language in the regulation, which would also permit use of auction proceeds to reduce ratepayer impacts, the RGGI program will have the flexibility to adjust this investment more efficiently in response to developing markets and technology.

The preferable way to accomplish this objective would be to have auction revenues subject to the New York Public Service Commission (PSC)'s jurisdiction rather than NYSERDA because of the PSC's special expertise in overseeing the administration of funds related to energy and efficiency and renewables, in addition to its rate impact expertise.

Long Term Contract Set-Aside Allocation

NY DEC has proposed to include a long term contract set-aside allocation of 1,500,000 tons per year from the base budget. While the GHG Coalition generally supports this provision, it notes that there are specific requirements that seem specifically limiting including:

- the long term contract was entered into prior to March 2006, and
- the provision to illustrate that the CO₂ emission rate from the CO₂ budget source covered by the long term contract is no higher than 1,100 lbs/MWhr.

NY DEC should reconsider the CO₂ emission rate requirement and evaluate an approach that is fuel neutral.

Waiver of Enforcement; Suspension of Compliance Obligation

The ME DEP has proposed regulations providing the authority to the DEP Commissioner to waive or suspend compliance obligations for CO₂ Budget Sources if there are high allowance prices or if issues not under the control of the Budget Source occur. The GHG Coalition encourages NY DEC to review this proposed regulation (*Chapter 157, CO₂ Budget Trading Program Waiver and Suspension*) and add similar provisions in the NY DEC RGGI regulations.

We look forward to continued participation in the New York RGGI process and thank you for this opportunity to provide input.