NATIONAL ASSOCIATION OF
State PIRGs

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To: RGGI Environmental & Energy Commissioners and Staff Working Group
From: Rob Sargent, National Association of State PIRGs
Chris Phelps, Connecticut PIRG
Matthew Davis, Environment Maine
Brad Heavner, Environment Maryland
Frank Gorke, MASSPIRG
Erika Staaf, New Hampshire PIRG
Dena Mottola, New Jersey PIRG
Jason Babbie, New York PIRG
Matthew Auten, Rhode Island PIRG
James Moore, Vermont PIRG

RE: Comments on the RGGI Model Rule.

The RGGI Model Rule, if designed to ensure meaningful reductions from the power sector, will set an important precedent and will show that the region is committed to begin reducing emissions from one important source of greenhouse gas emissions.

Since the emission reductions envisioned by the program are quite modest (10% reduction from 2009 levels by 2019), it is critically important that the program maximize reductions from global warming emission sources in the power sector as was envisioned in the original principles established at the beginning of the process:

"The program shall start simply and develop over time. The initial phase of the cap-and-trade program will entail the allocation and trading of carbon dioxide allowances to and by sources in the power sector only. In a subsequent phase of the program, states and stakeholders will work together to develop reliable protocols for offsets (i.e., creditable reductions outside the power sector) that may be used to achieve compliance with the cap. States may be able to achieve greater emissions reductions as the number of sources covered and the variety of compliance options increases, thereby reducing compliance costs" Regional Greenhouse Gas Initiative (RGGI) - Goals & Guiding Principles

Unfortunately, the draft model rule threatens to violate these key principles on several counts. In order to uphold the promise made by the Northeast Governors nearly three years ago substantial changes must be made.

The number of "flexibility" mechanisms in the draft model rule makes the program anything but simple. Two-thirds of the text of the model rule is devoted to ways in which generators can avoid reducing CO2 emissions from power plants. It is not difficult to envision a scenario in which the liberal use of offsets exacerbated by low safety valves, the erosion of the cap due to exemptions, and a failure to address the potential for leakage combine to form a "perfect storm" that would allow increases in carbon dioxide emissions from sources covered under this program.

The draft model rule must be modified to, a) ensure the stringency of the cap, b) ensure that the use of offsets to meet the modest reductions in this program is limited, c) explicitly include the five criteria (real, additional, quantifiable, permanent and enforceable), and d) include language that directs environmental regulators to, at a minimum, do the appropriate data collection to enable them to cooperate with other agencies to address the potential for leakage. Failure to do so will reduce RGGI to little more than a symbolic exercise.

Stringency of the Cap

We are very concerned that some of the flexibility mechanisms and design elements in the model rule will further inflate the cap and make the program less effective at reducing the region's greenhouse gas emissions. The current model rule already sets the initial cap at a level higher than current levels. Any further erosion of the cap is unwarranted.

The states should limit exemptions and loopholes by:

1) Not exempting the behind the meter generation of large industrial power generators. This is a power sector carbon cap and the program should cover all sources that would otherwise be eligible for the program. This is of particular concern since we believe that some behind the meter facilities were included in the inventory that led to the development of the cap levels. Either way, all fossil burning electric generating units should be included.

2) Ensuring that the fossil portion of a plant that also burns biomass remains regulated. The current proposal, establishing an arbitrary threshold of 50% under which a plant would not be covered, should be rejected.

3) Ensuring that early reductions do not inflate the cap and that facilities do not get credit for early reductions occurring as a result of enforcement orders or settlements that occurred prior to the finalization of the model rule. Only actual reductions, rather than the purchasing of offsets, should be eligible for early reduction credits.

4) Revisiting the safety valve trigger at its current level. At worst, the safety valve could erode or suspend the cap. And, at a minimum, it will undermine the ability of the program to force the kinds of investments necessary to make the energy transition we must make to begin reducing global warming pollution from the power sector.

Offsets

To meet the modest reductions (10% by 2019) required by the first phase of RGGI, significant offsets are not called for. Offsets should be limited to keep focus on real reductions from CO2 emitting power plants and to keep the program from being too cumbersome.

For the public to have confidence in offsets it must be shown that the pollution avoided or reduced by offsets is real and lasting and that the projects or activities eligible for offsets would not have happened as a result of other factors.

Throughout the stakeholder process we had been assured by state officials that any offsets program would be bound by the so-called five point test (real, surplus, verifiable, permanent, and enforceable) with language that is similar to that included in the Massachusetts 310 CMR 7.29 regulations. We were pleased to see that the MOU contained the following language: "*at a minimum, eligible offsets shall consist of actions that are real, surplus, verifiable, permanent and enforceable*". We were surprised and disappointed not to see this same language in the model rule. These criteria must be clearly spelled out in the model rule for the public to have confidence that any offsets used in the RGGI program are equal to on-system emissions reductions, and to ensure our support for the program.

Offsets must not cause collateral damage or risks to the environment or public health. The final model rule should have explicit language to ensures that "*offsets do not support projects or activities that pose a significant risk to public health, public safety or the environment*".

All five proposed offset categories will need rigorous accounting to ensure credit only for the extent that the offset overcomes a genuine market or financial barrier, and to discount for any "leakage" of emission reductions to other locations. Developing and implementing accounting standards will be time- and resource-intensive, with no guarantee of accuracy.

Two of the offsets categories should be rejected by the state working group; the fossil fuel efficiency category and the SF6 category.

The fossil fuel efficiency category should be rejected for many of the same reasons that the natural gas infrastructure category was held in reserve. The challenges associated with quantifying the reductions are great. But, more importantly building energy efficiency outside of the electric sector can be achieved at much lower cost to society through other mechanisms and policies.

The proposed criteria for inclusion of SF6 offsets under RGGI reward bad actors who have failed to adequately reduce their emissions of SF6 in the past. Under the proposal, to qualify for an offset, the SF6 reduction measure cannot be part of a "previously established" SF6 reduction effort. Such a distinction is necessary to meet the "additionality" requirement, since projects that began prior to the application for an offset should never receive consideration for offset credit. However, this distinction, in effect, penalizes utilities that have made good-faith, voluntary efforts to reduce SF6 emissions in the past by allowing their competitors to receive a greater amount of offsets.

Consumer Allocation & Strategic Energy Purposes

100% of the allowances should be allocated to consumers. There is ample evidence that the model rule establishes unjustifiably low minimum percentages for the consumer allocation. We have seen no credible refutation of the data presented throughout the RGGI process which shows that there will be significant windfalls to generators at the direct expense of consumers unless the predominant share of allowances is reserved for consumers. To the extent that the final model rule does not allocate all allowances to consumers, it should make clear that the percentage reserved for consumers is a minimum which each state is free to raise, and that the percentage allocated to consumers should increase over time.

We also have serious questions about the scope of the strategic energy purposes provision in the allocations section. There must be much better definition of this term. At a minimum, we recommend that the model rule clarify that all of the "consumer benefit or strategic energy purpose" allowance value must be used to: (1) reduce the costs of the RGGI program to the state's electricity ratepayers; (2) provide additional benefits for activities or projects that would not have occurred anyway and not replace existing programs or investments; and (3) support programs and activities that do not pose a significant risk to human health and the environment.

Leakage

"Leakage" has the potential to undermine the integrity of the RGGI program, by leading to increases in dirty power outside the region which could offset reductions achieved within the region. The states will need to develop a policy which ensures that the RGGI program reduces emission from in-region power plants and places the same requirements on imported power from outside the region, leading to net reductions in emissions associated with electric power use to achieve the 10% by 2018 target. At a minimum, the model rule should direct environmental agencies to do the gathering and sharing of data that is necessary to assist other agencies that might be called on to ensure that the program results in a net reduction of emissions.

In conclusion, we appreciate all hard work that has gone into this effort so far and the opportunity to have participated in the stakeholder process. We stand ready to work with you to achieve the objective of reducing global warming emissions from the power sector in the Northeast and to set a precedent for the nation to follow.