INTRODUCTION – These comments are submitted on behalf of The Business Council of New York State, Inc. The Business Council is New York's largest statewide employer advocate, representing more than 3,200 businesses, business groups, and related entities across New York State. Our membership is composed primarily of electric power consumers, includes more than 1,100 manufacturing firms. We also represent a number of businesses engaged in the generation of electric power within the state.

Our primary concern regarding RGGI is its potential for adverse impacts on the cost and availability of electric power in New York State, and the resultant negative impact on our industrial and commercial businesses.

There is no arguing that electric power prices in New York are already high. Compared to national averages on a per kwh basis, average industrial rates are 37 percent higher, and average commercial rates are 52 percent higher (data derived from U.S. Energy Information Administration "Average Retail Price" reports.)

Put in more direct terms, New York's business community pays a significant electric power premium – a price premium that is already having an adverse impact on New York's economy. As illustration:

- for a mid-sized commercial customer (50 KW load, 35% load factor, 12,600 kwh usage), New York's power premium is $884 month.

- for a mid-sized industrial customer (2000 KW load, 50% load factor, 720,000kwh usage), the premium is $41,000 month – nearly half a million dollars per year!

  (Based on NYS Public Service Department data for January 2006 for the National Grid service area, with energy prices compared to sector-specific national averages for the same period.)

Importantly, these average rates, especially in the industrial sector, are mitigated by NYPA hydro sales. The vast majority of business in New York pay rates even further above the national average.

We are concerned, then, that the RGGI rule will contribute to higher electric power prices in New York – both directly through the cost of emission allowances (whether distributed, sold or auctioned, CO_2 allowances will have a market value, and that market value will be reflected in energy prices) and indirectly by making New York State and the region even more dependent on natural gas as the fuel source for power generation. In addition, there are real concerns that the carbon cap imposed by RGGI, combined with limited opportunity to generate and use allowance offsets and a pending "anti-leakage" addendum to the model rule, that the RGGI program may also adversely affect power supply and system reliability.

The RGGI states have forecasted nominal electric power cost impacts due to

RGGI. However, their economic impact analysis show increases in electric prices ranging from one to nine percent are based on what we believe to be optimistic assumptions of long-term natural gas prices and other factors. Importantly, RGGI-related cost impacts will be in addition to other state-imposed costs, including our acid rain rule (Part 237 and 238), the state's system benefit charge, and its renewable portfolio standard charge – measures that, collectively, have already added nearly ten percent to energy prices in New York.

For these reasons, The Business Council continues to urge the RGGI states to assure that, if implemented, the RGGI program effectively address these cost and reliability concerns. The following recommendations are intended to help the states assess and address these concerns in the model rule.

Please feel free to contact me with any questions or comments regarding this submission.

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GENERAL COMMENTS ON MODEL RULE

Distribution of Allowances – Under the RGGI Memorandum of Understanding, the issue of allowance allocation is largely left up to the states (other than the 25 percent consumer benefit/strategic energy set aside committed to in the MOU), and therefore is largely unaddressed by the model rule. For that reason, The Business Council is not making any specific recommendations on the allowance allocation issue at this time beyond those concerning the 25 percent set aside. We will be developing and submitting specific comments on a New York State-specific allocation program to the state's environmental, economic and energy officials.

However, we do have concerns about the model rule language regarding the consumer benefit/strategic energy set aside. In our analysis, the New York State Department of Environmental Conservation does not have the statutory authority to either sell or auction CO_2 allowances; it clearly does not have the statutory authority to direct the proceeds of such sales to direct rate relief or to other "consumer benefit" programs. While we agree that the proceeds from any such sale should support programs to minimize adverse impacts on ratepayers, the state needs to carefully consider several factors in any allocation scheme, including, but not limited to, assuring a statutory framework that will direct any allowance proceeds to direct ratepayer benefit programs and assuring that any allocation mechanism allows power generators sufficient allowances to support long term power purchase contracts.

Creation and Use of Offsets – Given that there are no currently available controls to limit carbon dioxide emissions from RGGI-regulated sources, the need for allowance offsets from non-RGGI sources will be important for overall RGGI compliance, and to help mitigate adverse impacts on both energy costs and system reliability. The Business Council believes that the RGGI rule should allow for the creation of allowance offsets from any emission source where the greenhouse gas emission reductions are surplus, permanent, quantifiable and enforceable. We also believe that the use of offsets to achieve RGGI compliance should not be restricted to an artificial cap, as proposed in both the MOU and model rule. Since the RGGI rule addresses global climate change through the reduced emissions of greenhouses gases, there is no environmental basis to impose geographic, categorical or other restrictions on the creation and use of allowance credits that otherwise meet the criteria of surplus, permanent, quantifiable and enforceable. Conversely, the model rule's restrictive provisions regarding creation and use of offsets may result in higher allowance and energy prices under RGGI, and could result in inability for in-region power generation to meet growing power demands. For these reasons, we urge RGGI policymakers to eliminate the percent, geographic and categorical limitations on offsets and relax the approval criteria.

"Leakage" and Finalization of Model Rule -- It is our understanding that the RGGI states are developing an addendum to the model rule to address to so-called "leakage" problem – the potential for increased importation of power into the RGGI region from non-RGGI states. In part, the level of concern over "leakage" belies the assertions of limited rate impact from the RGGI rule on in-region generation. However, the states intend to finalize the model rule before proposing, and obtaining stakeholder input on, its anti-leakage proposal. There seems to be limited regulatory options available to the RGGI states on this issue. Our concern is that a proposed "portfolio standards" on load serving entities, which would restrict the ability of distribution utilities to purchase power out of state, could have significant impacts on both energy prices and system reliability. We urge the RGGI states to delay finalization of its Model Rule until it makes a specific proposal regarding leakage available for review and comment by regional stakeholders.

COMMENTS ON SPECIFIC PROVISIONS OF MODEL RULE

Part XX-1.2(h) (p.5) – It is unclear whether the defined term "CO_2 allowance" includes "offset allowances." Neither "offsets" nor "offset allowances" are explicitly included within this definition. We believe that the definition of "allowance" is intended to be inclusive. This is important since substantive requirements of the rule refer specifically to "CO_2 allowances" (e.g., Part XX-1.5(c), page 23, requires that regulated units have sufficient CO_2 allowances for compliance purposes at the allowance transfer deadline). We believe this is an editorial oversight, rather than a substantive issue for this model rule. To address this concern, the definition of "CO_2 allowances" should be amended to include "offset allowances."

Also, in this same definition, we question the intent and effect of the provision stating that this regulation does not limit the agency's authority to terminate a specific allowance. Given specific provisions in the model rule allowing for allowances to be invalidated under specific circumstances, the need for this provision is unclear. At most, this provision should provide that the state may "terminate allowances consistent with provisions of this rule."

Part XX-1.4(b)(1) – The Business Council supports this exemption for units with electrical output to the electric grid restricted by permit conditions. This provision limits the output to the grid to 10 percent of the power generated and also provides a means of enforcing this limit. This exemption also is consistent with the original intent of the RGGI rule, which was to limit greenhouse gas emissions from "merchant" and/or utility generators.

Part XX-1.4(b)(3)(iv) (p.21) – We question the meaning of this provision stating that exempt units must comply with provisions of the rule during "all time periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect." It is unclear how any provision of the RGGI rule would apply to units that are categorically exempt from the rule.

Part XX-1.4(b)(3) (v)(b) (p.21) – The Business Council does not support the proposed revocation of the exemption for non-merchant units in the event that their power sales temporarily exceeding the 10 percent sales threshold. Any such violation would constitute a permit violation and would be subject to existing civil penalty provisions. At most, revocation of this exemption should be at discretion of the enforcement agency and applied in a manner consistent with the state's pre-existing civil penalty policy (Note that NYS Department of Environmental Conservation already has authority to modify permits for cause.)

Part XX-6.4(c) (p.50) -- This provision again raises the issue of whether the term "allowance" includes "offset allowances." We believe that the term "allowance" was intended to be inclusive. Therefore, model rule should be amended to say that the agency will establish serial numbers for all offset allowances as well.

Part XX-6.5(d)(1) (p.53) – The Business Council opposes this "treble penalty" provision – a proposed deduction of allowances from a source's account equal to three times a source's excess emissions during a control period. Enforcement of the model rule needs to be viewed in context of pre-existing civil penalty provisions of the state's Environmental Conservation Law. Civil penalties for violations of ECL Article 19 are up to $15,000 per day for initial violations, and $22,500 for second and subsequent violations, and the state's civil penalty policy provides that penalty assessments offset any economic gain resulting from violations. Civil penalties seem the more appropriate response to violations of the model rule. This proposed treble penalty provision in effect penalizes the entire universe of regulated entities, not just the entity that committed the violation, by further reducing an already limited pool of allowances. The Business Council believes that this enforcement provision should require a one-for-one deduction, in addition to any applicable civil penalty.

Part XX-6.5(d)(2)(i) and (ii) (p.54) -- The model rule proposes civil penalty assessment criteria. Legally binding criteria for civil penalty assessments should be addressed in statute, not regulation. These criteria should be deleted from the model rule.

Part XX-10.2(n) (p.86) – We recommend that the definition of "energy conservation measure" be amended to say that an "ECM/EEM may involve, but not be limited to," the specific activities specified here. Note further that the specific criteria for "end use energy efficiency" projects in Part XX-10.5(d) (p.116+) is more limiting that this definition. While the definition refers to "physical changes to facility equipment," which would seem to include activities such as modifications to process/production equipment, the specific eligibility criteria in the model rule limit ECM/EEMs to seven specific categories of projects, excluding process/production equipment. The model rule should not limit a state's ability to include other categories of projects that it determines to be verifiable and enforceable.

Part XX-10.2 (w) (p.88) – We believe that the proposed 5 percent "market penetration rate" for end-use energy efficiency standards is unrealistically below. Further, it is unclear how "market penetration rate" would be calculated, or by whom. For these reasons, and our general concerns about the excessively restrictive provisions for allowance offsets discussed below, The Business Council recommends deletion of this provision.