From: "Ben Wiles" <bwiles@pulp.tc>
To: <RGGICOMM@gw.dec.state.ny.us>
Date: 5/22/06 3:23PM
Subject: Comments on RGGI Draft Model Rule

To: Franz Litz, Climate Change Policy Coordinator, New York State Department of Environmental Conservation

From: Ben Wiles, Public Utility Law Project

Date: May 22, 2006

Re: Comments on RGGI draft model rule

The Public Utility Law Project ("Project" or "PULP") is a not-for-profit legal services organization representing the interests of low-income residential consumers on gas, electricity, and telephone issues. We have followed the development of the Regional Greenhouse Gas Initiative ("RGGI") with great concern for the balancing it must demonstrate between the substantial consumer interests in effective programs to reduce, over time, carbon emissions and the traditional consumer interests in assuring that the price of electricity be just and reasonable and affordable for low-income households.

On the one hand, we write today to reemphasize for you our interests in the development of a CO2 emission reduction program based on real and verifiable reductions in CO2 emissions. In our view, the consumer's best interest is the development of actual, demonstrable reductions in CO2 emissions. We realize that the impacts of reduced emissions will not be felt in diminished health effects from power plant emissions, but only through increased probabilities that the long term effects of atmospheric carbon loading will be less severe or more delayed that is predicted in base case modeling. In the absence of real world impacts in the short run, the only demonstrable effect of the CO2 emission reduction program are the reduced CO2 emissions themselves. Therefore, program compromises that weaken overall emission targets or include compliance strategies that permit existing sources to avoid emission reductions must be disfavored. Accordingly, the introduction of, for example, "soft" reduction targets or "offset" initiatives which reduce the need for actual long term emission reductions from existing sources will directly compromise the substantial investment and financial commitment that consumers must make in the program's implementation. If such compromises are imposed, consumer support for the CO2 emission reduction program would have to be diminished.

A matter of even greater concern for consumers is the method chosen to distribute emission allowances as part of the program's "cap and trade" program. In our view, there is no program justification for the distribution of any allowances to generators at a lower than market cost or through a no cost "give-away". In our understanding, the accepted interpretation of the implementation of this program is that prices for electricity will rise, and that this rise will occur with the same probability and to the same extent when the allowances are "auctioned" to generators as when they would be given to generators in a low or no cost transfer. Since consumer's will pay this increase in prices in any case, and since generators will receive the additional revenues from this price increase in any case, there is no consumer interest served by giving the allowances away, rather than auctioning them to generators as a conventional market approach would require.

While the auctioning of allowances is vitally important to prevent a windfall for generators using carbon based technologies, the auctioning of allowances is not the only measure needed to fully protect the consumer interests. Because the wholesale markets for electricity create and use a market clearing price for all electricity producers and because this price will be higher due to the implementation of the "cap and trade" program, generators relying on non-carbon based technologies such as nuclear and hydroelectric generators will receive the higher price even thought they have no increase in production costs due to the CO_2 emission reduction program. For these generators, these increased revenues are a pure windfall. To the extent electricity from these generators is sold pursuant to a long-term contract, the implementing programs for CO_2 emission reductions in the several states should be shaped to preserve or enhance the purchasers' rights to seek contract adjustments to bring these windfalls back to consumers. To the extent that contract adjustments are unavailable, procedures should be developed through other legislative or administrative means to prevent these windfalls from occurring in the first place.

Thank you for the opportunity to provide these comments to the Staff Working Group.

Very truly yours,

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