Comments on the Regional Greenhouse Gas Initiative (RGGI) Model Rule

Submitted by the Pew Center on Global Climate Change

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The Pew Center on Global Climate Change (the Pew Center) appreciates the opportunity to comment on the Regional Greenhouse Gas Initiative (RGGI) Public Review Model Rule (the Model Rule). The greenhouse gas (GHG) "cap and trade" system envisioned by the Model Rule represents a reasonable, cost-effective, and innovative approach for participating states to reduce GHG emissions. Such emission reductions represent a critical first step in enabling member states to mitigate the adverse effects of global climate change on their states' environment, economy, and citizens. RGGI has taken a sensible approach to the use of offsets with a set of standards for specific categories that will expand over time.

Below are the Pew Center's comments and suggestions for improving the current version of the Model Rule. The comments are divided into three sections: 1) general comments, 2) comments in response to solicitation by the RGGI Staff Working Group (SWG) for input on specific issues, and 3) specific comments on certain areas of text within the Model Rule.

<u>General Comments</u>

The Pew Center's primary suggestion would be to increase the degree of flexibility in the program, especially related to offsets.

Compliance costs for the RGGI program will be modest, as shown by the rigorous analysis commissioned by the RGGI SWG and conducted by respected economic modeling firms. However, raising the percentage level of offsets that regulated entities can use to comply will further reduce program costs and promote integration of RGGI with other existing and developing GHG regulatory and trading programs in the United States and internationally.

The inclusion of a "safety valve" system in the Model Rule unnecessarily complicates the program. In its present state, the safety valve introduces uncertainty for covered entities and offset project developers. Removing the cap on offset use, the discounting of offsets from outside the region, and the safety valve trigger system would simplify the program and provide greater compliance cost certainty to regulated entities. In doing so, such measures would increase the efficiency and lower the overall cost of the program.

Offset credit allocation, reporting requirements, compliance periods, and, if included, safety valve trigger events, should have greater specificity regarding timing. Diagrams or timelines explicating these timing issues would be helpful.

<u>Comments in Response to Questions Posed by the RGGI SWG</u>

As stated above, the Pew Center generally endorses the approach to offset standards described in the Model Rule. In response to the Staff Working Group (SWG) questions, the Pew Center offers below specific comments on a number of issues relating to offsets.

1. Offset Additionality Issues

The Pew Center is concerned about the imposition of most of the "general additionality requirements" for CO_2 emission offset projects under the RGGI program (as currently contemplated on pgs. 92-93 of the Model Rule). Although we agree with the intention to promote projects that create "additional" GHG-reductions, as well as to promote the lowest-GHG-emitting and cleanest energy projects at a minimal cost, we believe that additionality criteria should be dealt with on a category-by-category basis through the standards, not through general criteria. Overly broad and/or complicated additionality requirements will cause significant problems for regulated entities, offset providers, and regulators alike. Attempts to impose broad additionality requirements in analogous programs (e.g. the Clean Development Mechanism under the Kyoto Protocol) have faced difficulties in defining standards for what is "additional," in applying such standards uniformly over a diverse set of specific projects, and have imposed a significant burden on program administrators that has contributed to a backlog of projects waiting for approval.

Accordingly, offset allowances should not be awarded to projects that are specifically required by laws or regulations (as generally envisioned by Subpart XX-10.3(d)(1) of the Model Rule). However, in response to questions posed by the SWG, offset projects that qualify under the RGGI program *should*, at least for some categories, also be eligible for incentives of other programs. That is, the General Additionality Requirements described in XX-10.3(d)(2)) of the Model Rule should be eliminated. Allowing projects to be eligible for multiple incentive programs can help to incentivize projects that are unlikely to be financially viable under RGGI or an RPS alone (for example, small-scale photovoltaic (PV) systems for homes).

Finally, the Pew Center believes that if any additionality requirements are used for projects that qualify for multiple incentive programs, that they should be tailored to each individual offset standard. In doing so, we further recommend against use of a "financial additionality" test, but encourage the SWG to consider the use of a "Size Threshold" or "Market Penetration Threshold" or "Date of Closure" standard as appropriate within specific offset categories. We believe that financial additionality presents a highly subjective standard that relies heavily on constantly shifting market conditions. The SWG may also want to consider reviewing Section 407 of Senator Dianne Feinstein's Discussion Draft of Strong Economy and Climate Protection Act of 2006 for guidance on addressing permanence.

2. Development of Standardized Offset Criteria for the Natural Gas Transmission and Distribution Category

There are currently a variety of ongoing efforts to quantify emissions and emission reductions from natural gas transmission and distribution systems by a number of trade associations, and domestic and international organizations. RGGI should review these efforts as it develops standards for natural gas transmission and distribution offsets.

3. Natural Gas, Oil, Propane End-Use Energy Efficiency Offset Standardized Provisions

The Pew Center agrees that new buildings should be eligible under this offset category. However, new building eligibility should not be limited to the replacement of an existing building or the construction of a zero net energy building.

The U.S. building stock is projected to increase significantly over the next few decades (roughly doubling by 2030). As a region of substantial size (in terms of both geographic area and economic activity), the Northeast can accordingly expect to experience significant growth in its building stock over the same time period. Reducing GHG emissions from these new buildings will be a critical part of any effective GHG-reduction program. Despite the existence of building codes for new buildings, new construction can still vary widely in energy efficiency and associated GHG emissions. Thus, the Pew Center believes that the Fossil Fuel Energy Efficiency offset provisions should incentivize progress towards zero net energy buildings, without prematurely requiring that level of stringency.

Recognizing the ability of new construction to achieve greater efficiency gains than retrofits of existing buildings, the Standards could still promote greater efficiency in newer buildings without requiring zero net energy buildings or eligibility based on the replacement of an existing building (e.g. the Standards could set an eligibility floor at 40% or 50% below the 2004 IECC in comparison to 30% below currently envisioned for retrofits in the Model Rule).

Specific Comments

Many of the general comments mentioned above are related to specific areas of the Model Rule. We have not repeated our comments and questions about these issues in our specific comments below.

Page 8, line 11, Subpart XX-1.2 (s). We suggest revising this definition to be more specific as to the meaning of combined cycle under the Model Rule. If this definition is meant to include cogeneration, it should be explicit.

Page 9, line 19, Subpart XX-1.2 (aa). Funds in the consumer benefit or strategic energy purpose account should be used for conservation measures in addition to the purposes listed in this paragraph.

Page 11, line 22, Subpart XX-1.2, (ae). The definition of fossil fuels could be expanded or made clearer.

Page 16, line 22, Subpart XX-1.2, (az). This definition is vital to operation of the safety valve triggers, and would benefit from greater clarity.

Page 41-42, Subpart XX-5.3 (c)(3)(i). We would like clarification as to the need for different methods to calculate early reduction allowances depending on whether total heat input during the early reduction period is less than or greater than the baseline period.

Page 56, line 2, Subpart XX-6.6. The Model Rule should be explicit as to whether there is a time limit for banking of emission allowances. Furthermore, the Model Rule should provide a mechanism detailing how allowances can be permanently retired, including by account holders not associated with regulated entities.

Page 70, line 17, Subpart XX-8.3 (a) and page 82 line 19, Subpart XX-8.8 (g) (3). These paragraphs as currently written seem to contradict each other and the latter could be read to incentivize use of nonfunctioning monitoring equipment.

Page 92, line 11, Subpart XX-10.3(a)(6)(c). The term “Sponsor” is not sufficient to avoid duplicate claims for credits. Processes for establishing clear proof of credit ownership should be explained in further detail in the model rule.

Page 92, line 16, Subpart XX-10.3 (a)(d)(1). The word “specifically” should be added to this first sentence so that it reads:

“CO_2 emissions offset allowances shall not be awarded to a project or CO_2 emissions credit retirement that is specifically required pursuant to any local, state or federal law, regulation, or administrative or judicial order.”

Page 92, line 18, Subpart XX-10.3 (a)(d)(1). The Model Rule should allow projects to continue to be additional in the event of a change of law that occurs after the project commences operation. Without such assurances, project developers may not be able to successfully secure financing due to uncertainty about the long-term revenue stream from emission reduction credits.

Page 98, line 17, Subpart XX-10.4 (3)(d)(3). The Model Rule should define whether “larger part” applies to dollars, tons, or some other measure of project size.

Page 109, line 12, Subpart XX-10.5(c) We agree that requiring conservation easements is an appropriate approach to address permanence. We believe that the Staff Working Group may want to offer an additional option, such as the verification process outlined in Subpart XX-407 of Sen. Feinstein’s discussion draft, which provides a viable alternative for offset projects that cannot pursue easements.

Page 116, line 13, Subpart XX-10.5 (d). The definition of this offset project type would benefit from rewording to improve clarity.

Page 118 line 16, Subpart XX-10.5(d)(3). The word “conservation” should be replaced with the word “efficiency”. Enforcing the market penetration rate requirement will be difficult; the SWG should consider relating eligibility to other standards, for example 20% above Energy Star®.