

To: The RGGI Staff Working Group

22 May 2006

In response to the March 23 request for comments on the draft RGGI Model Rule, the New Jersey Higher Education Partnership for Sustainability (NJHEPS) is pleased to provide comments in the form of this letter. These comments have been prepared by NJHEPS staff on behalf of the 40+ New Jersey colleges and universities that are members of NJHEPS, ranging from such large institutions as Princeton and Rutgers, through medium-sized schools such as Rowan University, Seton Hall, and the state community colleges, to small schools with enrolments of less than 1,000 students. (see www.njheps.org for more information on our organization).

The NJHEPS member institutions have a major interest in climate change, global warming and the need for significant GHG emission reductions to mitigate and manage the risks of climate change. In 2001, the Presidents of our member institutions agreed unanimously to try to voluntarily reduce their annual GHG emissions from 1990 levels by 3.5% by the end of 2005. [This number was selected because it was concurrently a goal of the NJ State GHG Action Plan.] We are still calculating the final results of this extraordinary and unique effort, and hope to report those results to the NJ President's Council by September 2006, and at that time propose they adopt a new GHG emissions reduction goal for the 2005-2010 time period. In addition, New Jersey has been a leader in promoting alternative energy generation that will reduce or eliminate GHG emissions, including a goal of installing 1,500 MW of solar energy production in the state by 2020, as part of meeting the State's RPS goal of 20% renewable energy by 2020. Many of our member institutions have been showing their leadership role by installing solar systems, buying wind power, replacing light bulbs, installing fuel cells, and thermal storage systems, and practicing & promoting green and energy-efficient design and operations approaches in new and retrofitted campus buildings. Much of this effort has been aided by funding from the NJ Bureau of Public Utilities (NJBPUI), either directly to our institutions, or through funding provided by NJBPUI to NJHEPS for use on college and universities in New Jersey. NJHEPS has also been a co-sponsor with the National Association of College and University Business Officers (NACUBO) on a new book on the business case for renewable energy at colleges in universities, which was just published last week by NACUBO (see www.nacubo.org for more information).

Meanwhile, energy costs have been significantly increasing in New Jersey over the past few months and years, adversely affecting the budgets of many of our NJ institutions of higher education. Thus, our members have an important interest in how the RGGI Model Rule works, as we envision using our continued leadership in reducing energy use to assist in reducing carbon emissions, and possibly providing carbon offsets to RGGI utilities as a means to fund some of our energy efficiency initiatives.

In this regard, we have the following specific and general comments on the draft RGGI Model Rule.

- 1) The RGGI draft Model Rule states that projects that reduce CO₂ emissions by reducing on-site combustion of natural gas, oil or propane for end-use in an existing or

new commercial or residential building by improving the energy efficiency of fuel usage, may qualify for the award of CO2 offset allowances. Many of our NJHEPS institutions may be interested in pursuing such energy efficiency projects over the coming years. However, Section XX-10.3 (d)(i)[page 93], states that [Co2 Offset] "Projects shall not receive funding or other incentives from any systems benefit fund, or funds provided through the consumer benefit or strategic energy purpose allocation...". Many states, including New Jersey through the NJBPU, use Systems Benefit Charges (SBC) to fund alternative energy, energy efficiency, green design, and energy audit programs. Many NJ higher education institutions have used, and continue to use, funding from the NJ Clean Energy Program to analyze and audit their buildings, and make energy efficiency improvements that reduce GHG emissions. Since a number of our institutions use heating oil or natural gas to power their buildings (or in some cases use natural gas to power fuel cells that generate electricity for their buildings), they would like to have the ability to develop carbon offset projects under the RGGI Model Rule, but Section XX-10.3 (d) (i) appears to preclude this from occurring, depending upon how "Projects" are defined.

When this question was raised at the NYC RGGI Stakeholder meeting, the answer was given that the term Project could be used to narrowly define a building which received ANY (no matter how small) SBC funding in such a way that the entire building or projects within it would be ineligible for offsets under the draft Model Rule. Therefore, a building that received \$2,000 in SBC-related partial funding for an energy audit in 2004 would thus be unable to receive ANY CO2 offsets in the future because of that very small amount of SBC funding. When pressed for further clarification, the Working Group speaker said the aim of this language was to prevent commercial organizations from getting SBC funding, a federal tax credit and a RGGI CO2 offset, which would provide too many incentives. However, most higher education institutions are NOT eligible for federal tax credits, due to their tax-exempt status, and may need this incentive.

Therefore, we would suggest adding/revising Model Rule language to clarify that if SBC funding is (or has been) used by tax-exempt organizations such as colleges and universities, it should not disqualify their buildings or energy-efficiency improvements from being eligible for energy efficiency CO2 offsets under the RGGI Model Rule. Our institutions may need the financial benefit of selling those offsets to utilities as a means of lowering the cost of their energy efficiency projects, and the offset value may make a difference in whether marginal projects get funded. At a minimum, it should clarify that past SBC-related funding should not preclude future CO2 offsets under the RGGI Model Rule.

The existing Model Rule language is also not clear as to defining the boundaries of whether a Project is a building, system or piece of equipment, and whether an eligible Project can be a system or piece of equipment within a building that received SBC funding (i.e., the Project is eligible even if the building is not). This need to be clarified, and perhaps dollar or % of cost limits placed on SBC funding, instead of a blanket "any" SBC funding disqualification.

2) Similarly, in Section XX-10.3 (d) (ii), there is a requirement that if an offset project has an electric generation component, that any other emissions/environmental attribute rights, other than the CO2 rights, must be transferred to the Regulatory Agency. We

assume that this means that if a natural gas or oil fired cogeneration unit used to heat a building or campus would have to give up any other emissions rights without compensation, thus preventing our member colleges and/or universities from selling RPS rights to renewable energy projects that improved the efficiency of natural gas/oil-fired buildings. This could be construed to even cover more energy-efficient heat recovery units that also as a by-product generate electricity. This may be in many cases either too small an amount of rights to justify the legal paperwork in transferring rights, or, as in comment #1, be large enough to negatively affect the financial viability of the energy efficiency project. We believe more clarification is need as to which rights are covered by this language, and would suggest that they not apply to not-for-profit institutions such as colleges and universities, and that small amounts of electricity generation be excluded.

3) The Definitions section is unclear whether a student residence hall owned by a not-for-profit higher education institution would be considered a commercial building or an allowable residential facility, or both, or neither. Language to clarify this may have to be added to definition Sections XX-10.2 (h) and (k), and/or other places within the Model Rule text.

4) Section XX-10.5 (c) 4 (iii) regarding “Calculating of Carbon Sequestered” states on page 114-115 of the Draft Model Rule that the total net carbon change should be reduced by 20% of the calculated amount, to account for potential losses of sequestered carbon. When a clarification was requested at the NYC stakeholder meeting, the answer given was this was to protect against potential catastrophic losses of sequestered carbon from fire, flood, expropriation, etc. However, we do not understand the rationale for increasing the costs of all sequestration projects by 25% ($100\%/80\% = 1.25$) to arbitrarily protect against risks that might be lower or higher, and for which the risk management of such risks might best be provided by the financial sector rather than by fixed regulatory rules.

5) Major requirements for extensive disclosure of financial information within the RGGI Model Rule may also limit the interest of higher educational institutions, especially private institutions, in providing offsets. It would be better to let independent third parties, such as financial exchanges (either existing stock market or commodity exchanges, or newly created carbon exchanges) provide the regulation of financial responsibilities and counter-party requirements, rather than the RGGI states or Model Rule implementing body.

6) A general comment is that the scope and size of the RGGI CO₂/carbon emissions program needs to be VERY quickly widened, both to other industries and geographically, and especially in terms of allowable offsets, if real, significant, reductions in GHG emissions are to be accomplished in a meaningful time period. Reductions are ultimately needed in the 50-70% range to have a measurable effect, not 10%. Many other industries (and some higher education institutions) might be able to provide GHG reductions at much lower cost than the utility industry, so the sooner that other industries are regulated by RGGI, the more effective and cost-efficient the RGGI cap-and-trade system will be. GHG emissions leading to climate change and global warming

is a GLOBAL problem, and GHG emissions reductions done outside the RGGI states will have the same net effect as GHG emission reductions in the RGGI states, so offsets should know no boundaries.

The New Jersey colleges and universities that are members of NJHEPS are committed to promoting aggressive and cost-effective reductions in GHG emissions and improving energy efficiency in New Jersey and elsewhere, and look forward to working with the State of New Jersey and RGGI on addressing these issues.

Please free to contact me if you have any questions regarding our comments, or to establish a dialogue with our member institutions regarding the implications of climate change, global warming, carbon credits and the RGGI Model Rule/process for New Jersey's higher education sector.

Best regards,
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Note: These comments are the result of consultations by NJHEPS staff with a wide number of higher education institutions in New Jersey, but should not be construed to represent the views or legal opinions of any specific NJHEPS member institution or institutions.