



Edison Electric Institute

*Power by Association™*

October 26, 2012

Nicole Singh  
Acting Executive Director  
Regional Greenhouse Gas Initiative, Inc.  
90 Church Street, 4th floor  
New York, NY 10007

Dear Ms. Singh:

In response to the Regional Greenhouse Gas Initiative's (RGGI's) October 19, 2012, request for written stakeholder input, please find enclosed comments by the Edison Electric Institute (EEI) in furtherance of the ongoing Comprehensive 2012 Program Review required by the RGGI Memorandum of Understanding. These comments address the "RGGI Program Review – Program Design Concepts" presentation paper under consideration by the member states and discussed at both the RGGI webinar of October 18 and the New York RGGI staff availability session of October 24.

EEI is the association of U.S. shareholder-owned electric companies, international affiliates and industry associates worldwide. EEI represents approximately 70 percent of the U.S. electric power industry. EEI has been participating in this review process as an interested observer and stakeholder, as demonstrated by our participation in the various public stakeholder sessions, and our comments submitted in February, May and July of this year.

We appreciate the opportunity to comment on the paper, and that it was made available to stakeholders in advance of the October 18 webinar presentation. We urge RGGI to continue making materials available for stakeholder participation and comment in advance of stakeholder meetings and, as we have stated in previous comments, to provide a much longer comment period for responding to RGGI proposals.

If you have any questions about our comments or would like to discuss them further, please contact Eric Holdsworth (202-508-5103, [eholdsworth@eei.org](mailto:eholdsworth@eei.org)) or me (202- 508-5617, [bfang@eei.org](mailto:bfang@eei.org)).

Sincerely,

A handwritten signature in black ink that reads 'William L. Fang'.

William L. Fang  
Deputy General Counsel and  
Climate Issue Director

Enclosure  
WLF:eh

## **EDISON ELECTRIC INSTITUTE COMMENTS ON THE RGGI PROGRAM REVIEW – PROGRAM DESIGN CONCEPTS PRESENTATION PAPER**

October 26, 2012

In furtherance of the second RGGI control period Comprehensive 2012 Program Review (Comprehensive Review) of the CO<sub>2</sub> Budget Trading Program (Program) by the nine participating states,<sup>1</sup> RGGI held a webinar and staff availability session on October 18 and 24, 2012, to solicit stakeholder input on Program design concepts/elements under consideration by the RGGI states. The Comprehensive Review is required by the amended Regional Greenhouse Gas Initiative (RGGI) Memorandum of Understanding (MOU). This stakeholder input, together with other information being gathered during 2012 by RGGI and the participating states, will be considered in evaluating any potential modifications to the Program for the second control period of 2012-2014.

The Edison Electric Institute (EEI) appreciates the states and RGGI, Inc. providing the above-referenced concepts paper more than a week in advance of the October 18 stakeholder webinar, and the opportunity to provide written comments on these matters.<sup>2</sup> However, as with our recent submissions, the comments below are necessarily shortened and focused on only a few issues due to the extremely limited amount of time provided by RGGI to comment. A deadline of one week after the webinar is inadequate in light of the operational and economic significance of

---

<sup>1</sup> The initial MOU was signed by the then Signatory States and dated December 20, 2005. It has since been amended in 2006, 2007 and 2011.

<sup>2</sup> As in the case of comments submitted by EEI on February 10, May 31, July 19 and August 20, 2012, as part of the Comprehensive Review, EEI requests that these comments be posted and listed under this October review. Our prior comments also are particularly relevant here regarding, for example, flexibility mechanisms, and are hereby incorporated by reference.

such matters. In accordance with state administrative procedure laws, EEI requests a much longer notice-and-comment period.

Furthermore, it is very important that RGGI and the participating states ensure that all stakeholders have a reasonable period of time (i.e., at least 60 days) to review and comment on any proposed MOU and Model Rule amendments, revisions, additions and changes before the states adopt any of them for consideration or take other action through their respective legislative or regulatory bodies for codification. This request would also apply to any Protocol, such as the proposed RGGI U.S. Forests Offset Protocol.

As part of the release of materials for the November 20, 2012, stakeholder meeting, it would be very helpful for RGGI and the participating states to explain the full process and timing for consideration and adoption by the states of any proposed changes, including when such changes would apply. As noted below, RGGI officials have indicated that some of the proposed changes will not become effective until the third compliance period, so it is not clear why those changes are being contemplated now.

To date, as we have emphasized previously, the presentations made available have been very general and often described only as matters under consideration by the states. Stakeholders do not yet have an understanding about which of these matters have gone beyond the “consideration stage” to the “proposed adoption stage,” nor do they have any knowledge of the format and nature of the legislative or regulatory provisions to be adopted, or what is being considered for the 2012-2014 emissions cap or the surplus allowances from 2009-2011. **This request—to give**

**stakeholders an opportunity to comment on the complete proposed MOU and Model Rule changes, including the cap adjustment proposal, after having seen the scenario modeling results and before the states finalize and take them back to their legislative or regulatory bodies for codification—is consistent with the clear need for transparency by RGGI, Inc. and the states, and in accordance with the public participation provisions of section 3.A. of the MOU.**

## **I. Overview**

We appreciate the addition of at least one other stakeholder meeting – on November 20 in Boston on IPM potential scenarios, macroeconomic modeling results and other matters – to the schedule, and again urge that RGGI make available the scenarios and modeling results and other presentations well in advance of that meeting in order to enable EEI and other stakeholders to make meaningful and timely comments on the Comprehensive Review called for by the MOU.<sup>3</sup>

We observe that the Design Concept paper explains that the RGGI states are conducting this Comprehensive Review to “ensure the environmental integrity of the RGGI program, and the long-term development of the RGGI market,” all in support of that review. While EEI appreciates the commitment of the states and RGGI to ensuring environmental integrity and the long-term development of the RGGI market and their efforts toward those ends, the MOU also includes the important objective of preserving and enhancing the economic welfare of the states’ residents, which includes the region’s electric utilities and their customers. We remain

---

<sup>3</sup> Among other matters, the MOU calls for a review of all the Program components, including whether the Program has successfully met its goals, the impact to system reliability, whether additional reductions after 2018 should be implemented, the effectiveness of any measures regarding emissions leakage, and the evaluation of the offsets component of the Program “with attention to availability” of offsets and their environmental integrity, as well as price.

concerned that many of the proposals in the paper do not seem to reflect the concerns and comments that EEI has expressed in those stakeholder communications, particularly regarding offsets and other flexibility mechanisms.

For example, in our May 31 comments EEI urged not only the retention of the offsets program under the amended MOU but also that it be improved operationally. Other stakeholders have made similar comments. In a document titled “Greenhouse Gas Market 2012, New Markets, New Mechanisms, New Opportunities,” the International Emissions Trading Association said (p. 48):

RGGI must move potential emissions reductions outside covered sectors to be cost effective, and therefore the availability of offsets needs to be a priority for a future RGGI program. The structural barriers must be removed, using protocols developed and certified by external standards rather than relying on in-house capacity and pushing to a broader methodological and geographical scope, including international units. This will provide a firm basis for offsets to create reductions from a broader suite of opportunities than currently afforded in the program design.

Yet the Design Concepts paper for the October 18 webinar is not only silent on such improvements but also states that RGGI and the states are considering, for example, retaining the 3.3-percent limitation on the use of offsets and deleting from the MOU potential international opportunities for offsets. Neither the paper nor the webinar have provided the results of the states’ evaluation of the RGGI offsets program, including what the states learned about long-running inactivity and lack of promise in the future for operationalizing the extensive provisions of the 2005 MOU (and its subsequent amendments) concerning the offsets program. EEI urges that the states provide those results and also reconsider their proposals for the offsets program.

The Design Concepts paper also covers several potential changes or modifications to the Model Rule and the amended MOU that the states are considering, though it is not clear if these are the complete list of revisions or additions resulting from the Comprehensive Review, or if more are being contemplated. **As noted in our May comments, it is difficult for stakeholders to evaluate and understand the impact and potential consequences of various proposed changes without knowing what other rule and MOU changes are being considered by the states, such as to the emissions budget for the second control period, which began with this year 2012, or allowance surpluses in the current period.**

## **II. Specific Comments on Program Design Concepts Paper**

### **A. Compliance Period Changes; Interim True-up (p. 5)**

The Program Design Concepts paper explains that in order to reduce the impact of potential non-compliance and to align with federal emissions abatement programs, the states are considering modifications to the CO<sub>2</sub> budget rules to create:

- A general requirement for sources to acquire and surrender allowances for 75-85 percent of their annual emissions over each of the first two years of the control period.
- Final compliance true-up at the end of the three-year period.<sup>4</sup>

It is unclear why these proposed rule changes are needed to reduce the impact of potential noncompliance by electric utilities, or why there is a need for RGGI to align its compliance rules with federal emissions abatement programs for non-carbon dioxide (CO<sub>2</sub>) air pollutants. The only non-compliance occurrence cited by RGGI involved bankruptcy, which is subject to other

---

<sup>4</sup> During the October 24 session, RGGI said that this percentage/true-up proposal would not be applied in 2012 because of legal issues in some states, and probably would not apply until 2015, which is after the next comprehensive review period in 2014. That raises the question of why the proposal would be adopted as part of this comprehensive review.

laws and procedures and which we understand has been resolved without impact on RGGI. In fact, according to a June 4, 2012, RGGI media release, CO<sub>2</sub> emissions from covered utilities in the region were collectively reduced to 33 percent below the annual pollution cap of 188 million short tons. Moreover, of the 211 power plants covered by RGGI, 97 percent of the units were in compliance. Indeed, RGGI, Inc. Chair Collin O'Mara of Delaware said, "The power sector has stepped up to the plate, working with the RGGI states to meet and exceed emissions targets well ahead of schedule."

Further, it is unclear from the paper what federal abatement programs would be aligned as a result of these significant changes and why such alignment is needed. During the webinar, in response to a stakeholder question, a state official indicated that RGGI was seeking to align its compliance true-up periods with those of the Clean Air Interstate Rule and NO<sub>x</sub> SIP call, though it is still not clear what benefit there is to such proposed alignment, not only to the Program, but also to the utilities and their customers. Moreover, as it was pointed out in the session, those Clean Air Act programs operate on an annual basis, while this Program is on a three-year cycle.

Unlike the amended MOU – which currently requires (under section 2.E.(7)) that covered facilities have sufficient allowances at the end of each three-year compliance period to cover their emissions during that period – this proposal would significantly limit that flexibility by requiring that facilities obtain sufficient allowances to cover most of their emissions in both year one and year two of the three-year control period solely for RGGI's administrative enforcement convenience and alignment with non-CO<sub>2</sub> federal programs. This proposal does not appear to recognize the costs to covered sources/facilities and their customers as a consequence of RGGI

imposing constraints on the flexibility now available to each electric utility as it strategizes on how and when to meet compliance obligations over a three-year period. Further, this proposal would be even more onerous and further undercut the flexibility of utilities to manage their compliance obligations if the control period is extended to four years, as proposed by the states under the paper's "Flexibility Mechanism Triggers (2)." We urge the states to reconsider this proposal or at least postpone it for the third comprehensive review.

B. Cost Containment Reserve (CCR) (p. 6)

The Design Concept paper explains that the states are considering establishment of a CCR as a cost containment flexibility mechanism. As noted in our May 31 comments, while we welcome the states' proposal to evaluate use of a CCR as a flexibility mechanism, we continue to have serious concerns with the proposed focus on a CCR and not on other mechanisms. We note that the proposal would limit the sale of CCR allowances to at or above a CCR trigger price, which is escalating with no explanation as to why that should be. In addition, the paper suggests that one proposal would be to eliminate the other forms of flexibility in lieu of the use of a CCR. As a result, covered sources – namely, electric utilities – could be forced to purchase CCR allowances even if offsets were available at lower prices apparently because offsets take too long to materialize. Such a proposal would limit flexibility in complying with RGGI, thus driving up the costs.

Furthermore, during the webinar, RGGI state officials indicated that purchase of CCR allowances would be open to all registered entities. We reiterate our concerns about allowing access to CCR allowances to non-covered entities, as noted in our May 31 comments:

Access to the CCR should be limited to entities subject to compliance under the RGGI program, since they would be the entities potentially in need of allowances.

Allowing other entities to participate in the purchase of CCR-based allowances would create higher demand and drive prices up, making compliance costs higher for electric utilities and their customers. Entities that are not subject to compliance under RGGI are already allowed to participate in the standard quarterly auction. Regarding the size of the potential CCR, RGGI should consider expanding the CCR to more than the suggested 10 million metric tons per year in case there is a greater need to tap into the CCR. In addition, unused CCR allowances should be made available the following year, either under the CCR or better yet via the auction process.

C. Flexibility Mechanism Triggers (p. 7)

The paper explains that the states are considering several changes to the use of flexibility mechanism triggers in order to prevent “undesirable behavior” caused by an overlap in flexibility mechanisms (CCR/offset expansion) and to simplify the use of offsets. While EEI was among the stakeholders who commented that the offsets price triggers are complicated and should be simplified, we do not understand how the proposed changes would simplify the process of creating offsets in the RGGI program.

One of the purposes of the Comprehensive Review is to evaluate the offsets program, specifically with attention to the availability of offsets, which provides an important opportunity to make changes to ensure their real availability. As stated in our comments of January 24, one important step would be to eliminate the 3.3-percent limit on the use of offsets. The 3.3-percent limit combined with the rigorous offsets application process effectively precludes the use of more cost-effective compliance options that could save electricity consumers millions of dollars annually.

Finally, we do not understand how removing references to international offsets<sup>5</sup> and substituting one of the proposed alternatives would be helpful in fostering an offsets program.<sup>6</sup> The objective seems to be aimed at discouraging the availability of offsets, which seems contrary to the purposes of the Comprehensive Review.

D. Flexibility Mechanism Triggers (2) (p. 8)

The paper states that in order to simplify the administration of the Program, the states are considering replacing the potential extension of the control period to four years with other flexibility mechanisms (i.e., CCR).<sup>7</sup> The proposal for an extension of the compliance or control period was suggested by RGGI in May as a means of improving enforceability. In our May 31 comments, we questioned the enforceability justification because, as noted above, there have not been any significant issues of noncompliance. The justification for this new proposal is to simplify Program administration, yet there is no explanation as to how that would occur or what administrative problem needs to be addressed.

Allowing a three-year compliance period has given covered entities greater flexibility in meeting their emissions reductions commitments, and the beneficiaries have been not only the utilities,

---

<sup>5</sup> There is confusion with the proposal because at the October 24 session the RGGI spokesperson said that the “or” in the paper should be an “and,” so that the proposal is not in the alternative.

<sup>6</sup> The 2005 version of the MOU provided that offsets allowances may be awarded to projects located “anywhere in North America or from international trading programs.” The August 2006 amendment to the provision deleted the reference to North America, presumably because the reference to “international” would include Mexico and Canada. However, the proposed changes in the Design Concepts paper would even exclude projects from those two countries, including Quebec, which is considering linkage with California.

<sup>7</sup> The “compliance period” referenced in the MOU and the “control period” defined in the Model Rule each provide for a three calendar-year time frame. The paper adds that if allowance prices exceed \$10 per ton (in 2005 constant dollars), the control period is extended from three to four years. Presumably, this refers to section 2.E(2) of the amended MOU.

but also their customers and ratepayers in the RGGI states. Nor do any of the relevant RGGI reports suggest a need to change the three-year period for administrative or other purposes. Compliance flexibility is important and should not be limited. Therefore, since the three-year period has proven to be effective in meeting emissions reductions controls and in minimizing economic impacts, it should not be changed.

E. U.S. Forests Offset Protocol (p. 9)

The paper explains that based on feedback from stakeholders, the states are developing a RGGI U.S. Forest Offset Protocol (including Forestry Management, Avoided Conversion and Reforestation) to replace the current RGGI afforestation offsets project category. This new protocol will be similar to the California Air Resources Board (CARB) U.S. Forest Offset Protocol.

Yet the paper does not explain how, and to what extent, the new RGGI protocol would depart from the California one, whether it would be in the form of an MOU amendment or an amendment to the RGGI Model Rules (in accordance with the public procedures of section 3.A of the amended MOU), or when the new RGGI protocol proposal would be available to stakeholders for review (which should allow stakeholders sufficient time to compare it to the California protocol and to analyze and comment on it before it is adopted). Clearly, stakeholders need time to do all that before it is adopted and effective. Indeed, since this proposal is so new and extensive, we encourage its adoption to be postponed to the third control period beginning in 2015.

Another important issue is how such a new RGGI protocol would enhance the availability of the offsets component of the Program and jump start that component. This is not clearly explained in the paper, nor was it explained during the webinar. In fact, replacing the current RGGI afforestation program with the proposed new and far more complex protocol could deter project developers from pursuing such projects or limit the availability of such offsets in the RGGI program. Finally, there is also no clear explanation as to why RGGI needs to pursue its own protocol in lieu of accepting offsets credits earned and certified under the CARB protocol, as we have suggested previously.

F. Early Reduction CO<sub>2</sub> Allowances (p. 11)

The states are considering deletion of the Model Rule provision related to Early Reduction CO<sub>2</sub> Allowances, which provides (under subpart XX-5.3(c)) that states “may” award early reduction CO<sub>2</sub> allowances (ERAs) to a CO<sub>2</sub> budget source for emissions reductions achieved by it during the early reduction period of 2006, 2007 and 2009, based on an application submitted by May 1, 2009, and a demonstration by such source that all CO<sub>2</sub> budget units that existed at the source during baseline period of 2003, 2004 and 2005 are included as CO<sub>2</sub> budget units for the ERA period. So long as such deletion does not adversely affect ERAs awarded pursuant to this provision, we have no objection to the deletion, particularly in light of the fact that the date for ERA applications has long ago expired.

**III. Conclusion**

The outcomes of the Comprehensive Review being undertaken by RGGI and the participating states could have significant ramifications for electric utilities, currently the only covered sources in the program, and their customers. In order to evaluate and understand fully the impact and

potential consequences of various proposed changes, it is vital that stakeholders know what other rule and MOU changes are being considered by the states, such as to the emissions budget for the next control period or to allowance surpluses in the current period. **Therefore, we reiterate our earlier request that RGGI and the participating states give stakeholders an opportunity to comment on the complete proposed Model Rule changes, including the cap adjustment proposal, after having seen the scenario modeling results and before the states finalize and take them back to their legislative or regulatory bodies for codification. Such a process is consistent with the clear need for transparency by RGGI, Inc. and the states, and with the public participation requirements of MOU section 3.A.**