

**Comments of the
Independent Energy Producers of New Jersey (IEPNJ)
On the Regional Greenhouse Gas Initiative (RGGI)
Public Review Model Rule Draft 3-23-06**

May 22, 2006

Introduction

The Independent Energy Producers of New Jersey (IEPNJ) appreciates the opportunity to provide these comments on the RGGI Model Rule Draft of 3-23-06.

IEPNJ is not-for-profit trade association that represents New Jersey's power generation industry. IEPNJ has been participating in the RGGI process over the past few years. IEPNJ members generate approximately 80% of the electricity produced in New Jersey. Members include companies that provide electricity for on-site use at New Jersey industrial and commercial facilities, as well as local and national corporations that sell electricity into the wholesale market for consumption by the state's utilities, which, in turn, sell that power to New Jersey homes and businesses. Since 1992, IEPNJ has worked productively with stakeholders, including the DEP, BPU, and state legislature, to develop responsible environmental and energy policies.

These comments do not address issues resolved in the Memorandum of Understanding (MOU) signed by the participating Governors. They are intended to address issues in the Model Rule Draft relative to its implementation of the

MOU. However, the IEPNJ reserves its right to file comments in future rounds of review of the Draft Rule or to take position relative to the MOU.

1) The “Leakage Review” provided by the MOU should be provided for in the Draft Model Rule.

The MOU provided a process designed to address the leakage issue. Due to the presence of power plants in non-participating states that compete in the same power market with power plants in participating states, leakage has great potential to undermine the ultimate goal of RGGI, to reduce greenhouse gas emissions. This is a concern shared by most participants to the RGGI process from environmental advocacy groups to fossil fuel generators.

The MOU had a series of specific provisions to address leakage, including:

- Forming a multi-state working group.
- Consideration of actions to address leakage prior to program launch in January of 2009.
- Monitoring of electricity imports.
- Establishment of allowance price triggers to create a more flexible offset market.

An intent of MOU is that prior to the effective date of RGGI the leakage issue should be more fully evaluated, and additional actions to mitigate it should be sought. Accordingly, the Draft Model Rule should be amended to provide a section on the effective date of the rule which states that the rule is not effective until January 1, 2009; and until the participating RGGI states complete their consideration of further actions to address leakage, as provided for in the MOU.

2) The Additionality Requirements of the Offset Proposal unreasonably limit Offset Project participation.

The Draft Model Rule (at Section XX -10.3, d (2) i & ii, Page 93) provides two restrictions on which Projects may participate in the offset program. These are 1) projects that receive funding through a state's system benefits charge may not participate and 2) projects that create renewable energy certificates (or their equivalent) must transfer such certificates to the State.

These restrictions are counter-productive to the growth of vibrant energy efficiency and renewable markets. Since many states offer rebates and other financial incentives for energy efficiency and renewables, and many states also have RPS requirements, these provisions would require energy efficiency and renewable project developers to choose either the state program or the offset program as a funding source. This restriction is severe and may prevent many worthwhile projects from participating in the offset program.

This will not only unnecessarily constrain the offsets program, it will slow the development of the energy efficiency and renewable industries. In many states projects currently can receive rebates and renewable energy certificate revenue for the same activity; or in other cases projects can receive rebates and receive certain tax credits for the same project. This dual funding is not a form of “double-dipping”, it is appropriate public policy designed to foster the growth of the energy efficiency and renewable energy industries.

The Draft Model Rule should be amended in similar fashion; and should permit Offset Projects to also receive system benefits funding or renewable energy certificate sales revenues.

3) The Draft Model Rule should more carefully define the role of the Consumer Benefit Strategic Purpose Fund Administrator.

A significant component of the MOU is a set-aside of 25% of allowances to fund consumer benefits or strategic energy projects. The Draft Model Rule (at Page 9 of the Definitions section) references, but does not define, a Consumer Benefit Strategic Purpose Fund Administrator. This Administrator will hold significant revenues from the sale of 25% of the allowances under the RGGI program. It will receive revenue through the sale of allowances, primarily to generators or to other market participants. The Draft Model Rule does not, however, define the

Administrator's role, nor does it establish how stakeholders will have input into the Administrator's decision making process. The Draft Model Rule should be amended to provide such clarification to assure that funds are properly directed, within an open public process.

4) The Draft Model Rule should be amended to recognize the some power plant operators do not control the output of their facilities.

The Draft Model Rule places fossil fuel generators above 25 MW under its requirements. This includes the general requirement that such generators must use and purchase allowances to operate its facility. The policy underpinning of this trading program is that generators will respond to the allowance prices and make rational decisions about whether to operate and emit carbon dioxide.

However, due to specific circumstances in the electric industry, there is one set of circumstances when the generator does not have control over the level of output of the facility. This circumstance occurs when the generator has a long term power purchase and sale agreement that gives the purchaser of the power from the plant the sole right to control the output, or "dispatch", of the plant. In this circumstance, the generator is powerless to effectuate any reductions in CO₂ emissions which is the goal of RGGI. Accordingly, the allowance responsibility should not be placed on the generator, and should instead be placed on the purchasing entity that controls the facility output.

The National Energy Act of 1978, which was this nation's first comprehensive effort to promote energy efficient, cleaner power generation, contained provisions under the Public Utility Regulatory Policies Act (PURPA) which set in motion the development of the large scale cogeneration industry. In the decades that followed, many cogenerators signed long-term power purchase agreements with electric utilities pursuant to PURPA. Some of these agreements, signed well before (in some cases more than 10 years) before RGGI was ever considered, gave the purchasing utility the right to dispatch power from its plant at its discretion. As a result, the generator must operate when called, and, importantly, relative to achieving the goals of RGGI, has no ability to control generation output and associated CO2 emissions. It is appropriate that the economic cost (or value) of CO2 allowances be internalized by the entity that makes the decision for the generator to operate - - the buyer of power, and controller of dispatch, under the long term power purchase agreement. In this circumstance, only the purchaser can make the appropriate decision that is at the heart of the RGGI trading program - - to run the plant, buy allowances or offsets; or curtail operations and sell allowances to higher valued users.

Accordingly, the Draft Model Rule should be amended: 1) to provide definitions that recognize operators and owners which sell power under long term power purchase agreements and give the energy dispatch right to the buyer under these agreements; 2) to provide in the applicability section of the Draft Model

Rule that the obligations that flow from the model rule are the buyers in such agreements; 3) require the selling generator to provide needed emission data to its buyer and to the state agency administering the program.

This amendment will serve to further the goals of RGGI by providing the allowance allocation, and associated allowance use decision, to the buyer who can make the appropriate decision whether to dispatch the generator.

The IEPNJ appreciates the opportunity to provide these comments.