

NEW YORK STATE COALITION OF ENERGY AND BUSINESS GROUPS^{1,2}

May 22, 2006

To: Regional Greenhouse Gas Initiative (RGGI) Staff Working Group

From the outset of the RGGI program development, the New York Coalition of Energy and Business Groups (the Coalition) has supported the RGGI goal of reducing greenhouse gas (GHG) emissions in a manner that would neither jeopardize electric system reliability nor place undue economic burdens on electric customers and power producers in the RGGI states. Coalition members also believe a national rather than a regional GHG policy should be implemented, and that the RGGI program should serve as a catalyst for its development. The final RGGI program should therefore be exemplary and not geographically punitive to an already CO₂ efficient electric generation region of the country. The final program should be fine tuned to make RGGI more attractive to other geographical areas through flexibility mechanisms that would minimize the need for fuel switching and consequently maintain the diversity of our nation's energy supplies.

Coalition members acknowledge that modeling performed to date suggests this widely demanded goal may be achievable. Coalition members believe, however, there continues to be proposed program components that when collectively summed present unacceptable risks that may not have been reflected in modeling done to date. Consequently, it is our opinion that goal attainment remains uncertain.

The Coalition remains concerned that the RGGI program will provide little or no environmental benefit owing to the still legitimate exposure to severe leakage directly within and on the borders of the RGGI region. Three

¹ The Coalition members are The Business Council of New York State, The Energy Association of New York State, The Environmental Energy Alliance of New York, Independent Power Producers of New York, and KODA CONSULTING, Inc. on behalf of International Brotherhood of Electrical Workers, Local 97.

² Additional, detailed comments on the draft RGGI Model Rule are being submitted by individual members of the Coalition.

ISO reliability reports project the northeast will be short of required generation in the 2007/2008 timeframe. Accordingly, the final model rule must be protective of existing state generation portfolios and be crafted to promote rather than deter new regional investment in electric generation facilities. To ensure this sensitivity is fully vetted, it is imperative that additional workshops that incorporate the needs of the energy trading and investment side of the energy markets be conducted very soon. The energy, environmental and economic vitality of the northeast states demand a balance is struck.

Coalition members understand that proposed state budgets when compared to historic baseline emissions appear to make the caps for each state attainable. However, the majority of our members believe the availability of allowances necessary to keep the program on track for meeting the goal has been over-optimistically projected. In particular, the program component that we will here refer to as the allocation component must be reexamined and modified to remove remaining risks.

The Coalition offers the following comments on several critical components of the draft Model Rule.

The Coalition recommends the Phase 2 reduction of emissions should be a mid-course correction rather than a predetermined value. Appropriate emissions targets scheduled to begin in 2015 should be based on an evaluation of emissions reductions, program costs, demand growth, renewable implementation programs, impact of new emission sources, and the environmental and electric system impacts due to leakage. Emission targets should also be consistent with any federal CO₂ control program. Uncertainties about how these variables will actually impact the program suggests it would be more appropriate to *determine* an empirically derived emissions target than to specify a speculative *predetermined* one.

The Coalition does not have a consensus opinion on the allocation of allowances. Many Coalition members³ believe allowances should be given to sources at no cost, and any consumer benefit and strategic energy purpose set aside should be *at most* 25 percent of a state's allowance budget. Others,

³ Generation Committee of the Environmental Energy Alliance of New York; The Independent Power Producers of New York; and KODA CONSULTING, Inc. on behalf of International Brotherhood of Electrical Workers, Local 97.

including National Grid, believe allowances should be purchased by generators and all proceeds equitably returned to residential, commercial and industrial ratepayers. The Business Council and The Energy Association of New York State have not taken a position on this issue.

Those Coalition members³ that request the public benefit set aside be no larger than 25 percent propose an alternative distribution of the set aside allowances. In order to ensure that each source will have access to the allowances it may need, those members propose that allowances that are not given to sources through direct allocation should be offered for sale to the source with a right of first refusal. To further explain, an allocation methodology will be determined by each state. Each state will then determine what 100% of the allocation to each source will be. Under this proposal, each source will receive 75% as a direct allocation and will have the right of first refusal to purchase all or part of the remaining 25%. The cost of these allowances would be based on the IPM modeled price for the first year until sufficient market pricing is available. Any allowances that a source chooses not to purchase can be distributed by the state in an open-market auction, if auctions are approved by individual states. The introduction and sale of these allowances should be monthly or quarterly, at a minimum, for planning certainty throughout the year. Should sources wish to obtain allowances in excess of their full allocation, such allowances would be acquired from an open trading market. These members of the Coalition believe this recommended approach would greatly minimize the risks for not meeting the stated program goals. First and foremost, if adopted, large capitalized market participants and potential market manipulators would be unable to create a strategic market shortage for sources and inordinately drive up the allowance price.

The Coalition believes the rules for qualifying offsets and the limit on use of offsets for source compliance are too stringent. The potentially small regional allowance market and the lack of CO₂ control technology for direct source control support our contention that there should be no limitation on the use of offsets for compliance. It may be particularly critical early in the RGGI program to have offsets available for compliance until effective control technologies are available and cost-efficient. The Coalition recommends removing limits on the use of offsets for compliance and, because GHG emissions are equivalent globally, there should be no allowance discounts based on geography. The use of offsets is recognized

by the European Union as a program component that is environmentally sound. Offset credits approved in the EU programs should be acceptable by the RGGI states. Finally, offsets should remain viable for the duration of the crediting period (e.g., ten years) even if new regulations mandate a similar action. Some certainty of the value of an offset project over a minimum number of years will encourage project development.

The Coalition is also concerned about the anticipated difficulty in actually qualifying for and obtaining offsets. Severe constraints associated with geographic discounts, financial and regulatory additionality tests, and incentivized and/or co-supported projects with SBC or RPS funds make the flexibility compliance potential for offsets suggested by the project supply curves almost meaningless. We respectfully urge reconsideration and relaxation of each of these constraints. Additionally, the model rule should contain specific language that readily facilitates the addition of offset categories as approved by the states.

The Coalition proposes an allocation methodology for new units.

Modeling conducted in support of the RGGI program included new power plants that had been approved through the Article X process in New York State. The base case modeling did not include any new coal units within the RGGI region, although a sensitivity analysis was conducted to allow for new coal units on an economic basis. However, the recent announcement by Governor Pataki for a 600 MW advanced clean coal project in New York represents a significant increase in carbon emissions unaccounted for in the RGGI emissions cap. This significant new development, in combination with anticipated normal load growth begs the question whether sufficient allowances will be made available from replacement of higher emitting generating sources by new or re-powered cleaner sources which occurred previously in the RGGI region. The new unit set aside for this plausible future would be substantial. The Coalition recommends that new sources operate outside of the RGGI program until the units are captured under the normal allocation process.

The Coalition offers the following suggested revisions and comments to specific language of the draft Model Rule:

Subpart XX-1 CO₂ Budget Trading Program General Provisions

1.2 DEFINITIONS. Item (f) *Biomass*. The Coalition suggests the definition of biomass be expanded to include source-separated, unadulterated wood portion of municipal solid waste and C&D debris. These biomass source types are consistent with eligible feedstocks in the draft NYSERDA Biomass Guide 2006.

1.2 DEFINITIONS. Item (ab) *Continuous emission monitoring system*. Does this imply that a NO_x monitor needs to be installed on all affected units?

1.2 DEFINITIONS. Item (ar)(3) *Owner: any purchaser of power from a CO₂ budget unit under a life-of-the-unit, firm power contractual agreement*. This provision should be deleted from the Model Rule. RGGI shouldn't be getting involved in issues that are addressed in a contract, including CO₂ allowances.

1.4 APPLICABILITY. Item (b)(1) *Limited Exemption for units with electrical output to the electric grid restricted by permit conditions*. Presently, this language is optional for inclusion by states into Title V permits. There should be some kind of permit language that states steps that an owner must do if a unit sells more than 10% of its output to the grid.

1.5 STANDARD REQUIREMENTS. Item (e) *Recordkeeping and reporting requirements*. The requirement for a 10 year retention period for all related records conflicts with existing Title V requirements of a 5 year retention period. Also, centralized electronic recordkeeping should be allowed and language should be specifically added to the model rule.

Subpart XX-4 Compliance Certification

4.2 REGULATORY AGENCY'S ACTION ON COMPLIANCE CERTIFICATIONS. Item (b) Regulatory agency "*of*" should be "*or*".

Subpart XX-5 CO₂ Allowance Allocations

5.3 CO₂ ALLOWANCE ALLOCATIONS. Item (c) *Total facility shutdowns shall not be eligible for ERAs*. The Coalition contends that both a source shutdown and a facility shutdown should be eligible for ERAs.

Subpart XX-8 Monitoring and Reporting

8.1 GENERAL REQUIREMENTS. Item (a)(1). Equation G-1 determines the carbon emitted using fuel sampling and fuel feed rates. It is not clear why the draft model rule excludes this approach but the Coalition believes consistency with the Federal regulations should be preserved as much as possible and, therefore, this approach should not be dismissed.

In addition to references to 40CFR part 75.13 and 75.72, a reference to 40CFR Part 75.71 must be included. This will allow for the monitoring of peaking units that are not low mass emitters.

8.5 RECORDKEEPING AND REPORTING. Item (d)(1) "The CO₂ authorized account representative shall report the CO₂ mass emission data and heat input data for the CO₂ Budget unit, in an electronic format prescribed by the REGULATORY AGENCY or its agent for each calendar quarter" should be changed to "The CO₂ authorized account representative ***or his or her delegated agent*** shall report the CO₂ mass emission data and heat input data for the CO₂ Budget unit, in an electronic format prescribed by the REGULATORY AGENCY or its agent for each calendar quarter" 40CFR Section 96.115 Delegation by CAIR designated representative and alternate CAIR designated representative specifically authorizes designated

representatives the authority to delegate electronic submissions to the Administrator.

8.5 RECORDKEEPING AND REPORTING. Item (d)(2). *CO₂ Budget units that co-fire biomass*. The Coalition recommends that a complete conversion of an existing CO₂ budget source to biomass, not just biomass co-firing, should be allowed for direct source compliance. An alternative compliance strategy for existing fossil fueled CO₂ sources is the on-site conversion of an entire unit to biomass with credit given for the carbon emissions attributed to the biomass unit.

8.5 RECORDKEEPING AND REPORTING. Item (d)(2)(i) Typo: “REGULATORY AGENCY its agent” is missing an “or”.

8.5 RECORDKEEPING AND REPORTING. Item (d)(3); This section says to submit each quarterly report to the REGULATORY AGENCY or its agent and the reports shall be submitted in the manner specified in subpart H of 40 CFR part 75 and 40 CFR 75.64. The concern with this is that the EPA does not have a mechanism for reporting CO₂ emissions from ~~for~~ non-Acid Rain units. All reporting instructions for the current record types state that CO₂ emissions are reported for Acid Rain units only. Even with the revisions to the EDR reporting structure that the EPA is currently testing and finalizing, it is uncertain (and probably unlikely) that CO₂ data will be able to be submitted for these units. It is suggested that the RGGI Staff Working Group work with the affected sources and EPA to determine how the data will be submitted and QA/QCed for the non-Acid Rain sources. If the submittals follow the regulatory requirements why would a submittal beyond that required for the EPA be required?

8.5 RECORDKEEPING AND REPORTING. Item (d)(4). The compliance certification language is slightly different than EPA’s and will require a special statement if you do submit to EPA. EPA data checking software will return an error message unless EPA is forewarned.

8.8 ADDITIONAL REQUIREMENTS TO PROVIDE NET OUTPUT DATA. Overall, CEMs monitoring should/must harmonize with Title IV (40 CFR 75) and NSPS Subparts Da, GG, and KKKK to reduce the burden on owners and operators. This includes the reporting of gross output (megawatt electrical and steam) as is done in present EDRs, not net output. The Coalition recommends that only gross output data be used, consistent

with current EPA reporting obligations. Gross output data accounts for parasitic load used to operate pollution control equipment. Failure to account for this energy penalty unjustly rewards uncontrolled sources.

8.8 ADDITIONAL REQUIREMENTS TO PROVIDE NET OUTPUT DATA. Item (e)(1)(11). The requirement to provide a diagram with the “net steam system” would be a very onerous one for a company like Con Edison, which has roughly 1,800 steam customers. What is the purpose of this diagram?

8.8 ADDITIONAL REQUIREMENTS TO PROVIDE NET OUTPUT DATA. Item (g)(3). *Out of control periods.* The Coalition recommends that the rule simply follow the existing requirements of 40 CFR 75 rather than adding new requirements in this rule.

8.8 ADDITIONAL REQUIREMENTS TO PROVIDE NET OUTPUT DATA Item (h)(3). *Annual Reports.* Most regulatory required compliance report submittals are either web based or disk. The Coalition recommends electronic submittals should be an option to the required hard copy reports.

Subpart XX-10 CO₂ Emissions Offset Projects

10.4 APPLICATION PROCESS. Item (c)(2). How is the Staff Working Group proposing to track retirements of Clean Development Mechanism (CDM) or other non-RGGI credits if trigger points are hit during the compliance period?

10.5 CO₂ EMISSIONS OFFSET PROJECT STANDARDS. Item (b). *Reduction in emissions of sulfur hexafluoride.* Companies that have voluntarily spent large amounts of money to minimize releases of GHG gases, such as SF₆, should not be penalized with the financial additionality requirement. Many companies have been in the EPA SF₆ Partnership for years and have reduced emissions significantly. But the “low hanging fruit” have been removed and additional SF₆ mitigation will come at an increased cost with possibly less impact on emissions. Therefore, the additionality

requirements, excluding regulatory, should be removed from the text of the Model Rule in the SF₆ Offsets subdivision

10.5 CO₂ EMISSIONS OFFSET PROJECT STANDARDS. Item (b). *Reduction in emissions of sulfur hexafluoride.* The word “fugitive” should be removed from this line. Some SF₆ containing equipment was originally designed to hold other dielectric materials such as oils and fluids and when switching to SF₆ it was known that this equipment was inherently leaky, but the switch was made anyway.

10.5 CO₂ EMISSIONS OFFSET PROJECT STANDARDS. Item (b)(1)(ii). *Reduction in emissions of sulfur hexafluoride.* Line 14, refers to “all” SF₆containing equipment, it shouldn’t be “all”, because some equipment is hermetically sealed and would not be part of the SF₆ Partnership program.

10.5 CO₂ EMISSIONS OFFSET PROJECT STANDARDS. Item (b)(1)(iii). *Reduction in emissions of sulfur hexafluoride.* Line 3, strike “involve disruption of electricity service” and replace with *jeopardize system reliability as set forth in regulatory criteria documents.*

10.5 CO₂ EMISSIONS OFFSET PROJECT STANDARDS. Item (b)(2)(i). *Reduction in emissions of sulfur hexafluoride.* The detailed description of a transmission/distribution system could become a FOIL-able document which is counter to FERC system security mandates.

10.5 CO₂ EMISSIONS OFFSET PROJECT STANDARDS. Item (b)(1) *Eligibility.* The draft Model Rule requires the entity-wide emissions rate of SF₆ to be less than the regional emission rate in order for a sponsor to be eligible for the program. This requirement has an unintended effect of inciting project sponsors to delay emissions reductions beyond the regional rate until they meet the eligibility requirements. Instead, the Coalition recommends that a company with a higher rate could use the regional emissions baseline in the first year and only additional emissions reductions beyond baseline would qualify for offset credit.

10.5 CO₂ EMISSIONS OFFSET PROJECT STANDARDS. Item (c)(4)(iii). *Calculating carbon sequestered.* Afforestation projects are limited by available land in the RGGI region, by the acreage necessary to obtain significant volume of carbon offsets to be useful for source compliance, and by conservation easement criteria. The additional hurdle of a twenty percent

discount for potential losses of carbon due is an unreasonable disincentive to afforestation project developers. Project developers should be given the option to protect against significant losses through insurance or with contractual guarantees with the entity that purchases the offset credits.

10.5 CO₂ EMISSIONS OFFSET PROJECT STANDARDS. Item (d) *Reduction or avoidance of CO₂ emissions ...due to end use efficiency.* The language should be changed to include fuel switching for oil to gas, without it being linked to an energy efficiency project. Switching from oil to gas reduces CO₂ by 30%. The Coalition suggests the following language: “A project that reduces 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 *or carbon* efficiency of fuel usage...”

10.5 CO₂ EMISSIONS OFFSET PROJECT STANDARDS. Item (d)(3) *Performance Standards.* Limiting qualifying energy efficiency technologies to those with a five percent market penetration excludes older technologies that could achieve similar GHG reduction goals and would exclude fuel switching to a more carbon efficient fuel. How will the five percent market penetration for energy conservation measures from natural gas, oil or propane end-use combustion due to end-use energy efficiency be determined?

Thank you for the opportunity to participate in the Stakeholder process and for your consideration of our comments.

Sincerely,

John G. Holsapple, Director
Environmental Energy Alliance of New York and
Coalition Stakeholder Representative