

**COMMENTS OF MULTIPLE INTERVENORS
REGARDING THE REGIONAL GREENHOUSE
GAS INITIATIVE DRAFT MODEL RULE**

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MAY 22, 2006

I.

PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of 53 large industrial, commercial, and institutional end-use energy consumers with facilities throughout New York State, by its attorneys Couch White, LLP, hereby respectfully submits its “Comments of Multiple Intervenors Regarding the Regional Greenhouse Gas Initiative Draft Model Rule” (“Comments”).

As explained herein, the Regional Greenhouse Gas Initiative (“RGGI”) Draft Model Rule should not be implemented at this time by or within the respective RGGI states because, if implemented, the Draft Model Rule will drive up energy costs for end-use consumers without correspondingly reducing the levels of carbon dioxide in the ambient atmospheres of the respective RGGI states. However, if, arguendo, the Draft Model Rule is implemented in the RGGI states, then the cost-impacts to end-use electric consumers should be mitigated to the maximum extent possible by auctioning all of the RGGI air emissions allowances and applying all of the proceeds from such auctions as a per-kilowatt hour (“kWh”) credit to retail electric distribution rates within the RGGI states. Moreover, if, arguendo, the Draft Model Rule is implemented, then the rule should be harmonized with the respective states’ distributed generation policies and otherwise amended and implemented as described herein.

II.

CONTACT INFORMATION

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III.

DESCRIPTION OF MULTIPLE INTERVENORS

Multiple Intervenors is an unincorporated association of 53 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, including the service territories of all of the state's major regulated electric utilities. Formed in 1972, Multiple Intervenors represents its members' interests in regulatory, administrative and legal forums at the national, regional and New York State levels.

Multiple Intervenors has been an active participant in the restructuring of the electric industry on both the federal and New York State levels. In the course of such participation, Multiple Intervenors represents its members' interests in select electric and natural gas utility rate cases and other proceedings before the New York State Public Service Commission ("NYSPSC"). Moreover, Multiple Intervenors represents its members' interests in numerous Federal Energy Regulatory Commission ("FERC") proceedings. Finally, Multiple Intervenors also represents its members' interests before other New York State regulatory agencies and, where necessary, in state and federal courts.

By way of further introduction, Multiple Intervenors also is an active participant in the governance of the New York Independent System Operator, Inc.

(“NYISO”). Specifically, through five of its members, Multiple Intervenors is a voting member of the NYISO’s Management Committee, Business Issues Committee and Operating Committee, and participates actively in selected NYISO planning and operations matters.

Multiple Intervenors members support environmental initiatives, and most are leaders in their respective industries with respect to environmental compliance. However, many members have strong concerns about environmental rules, such as RGGI, that will provide little or no direct environmental benefit for the implementing state, but will increase energy costs significantly. Large employers in the RGGI states already face severe competitive pressures due to energy prices that afford other regions, and nations, a significant competitive advantage. Accordingly, any measure, such as RGGI, that will further exacerbate the competitive imbalance by increasing energy rates must be scrutinized carefully. It is Multiple Intervenors’ position that the Draft Model Rule cannot pass a balanced cost/benefit analysis and, as a result, the Rule should not be adopted or implemented at this time.

IV.

COMMENTS

The Draft Model Rule should not be implemented in the RGGI states at this time because implementing the Rule will drive up energy costs for end-use consumers without providing commensurate reductions in the levels of carbon-dioxide gas in the RGGI states’ ambient atmospheres. However, if, arguendo, the Draft Model Rule is implemented: (a) the cost-impacts to end-use electric consumers in the RGGI states should be mitigated to the maximum extent possible; and (b) the rule should be harmonized with the distributed

generation and other energy policies of the respective states; and (c) the Rule otherwise should amended as described herein.

A. The Cost To Implement The Draft Model Rule Outweighs Its Benefits to the RGGI States

As explained herein, Multiple Intervenors believes that the costs associated with implementing the Draft Model Rule will exceed the direct environmental benefits to the end-users of electricity, including the residential, commercial and industrial electric consumers in the RGGI states, that would result from implementation of the Rule.

1. Implementing The Model Rule Will Drive Up Energy Costs

Large energy consumers in the RGGI region pay some of the highest, if not the highest, energy costs in the nation. For example, as the data in the following table reflects, New York’s commercial and industrial end-use energy consumers pay substantially more for electricity than similarly-situated consumers in neighboring states and regions, as well as the nation as a whole.

Average Monthly Electric Costs as of January 1, 2006 – \$/kWh

Customer Type	Commercial	Industrial	New York Commercial % Difference	New York Industrial % Difference
kW Demand	500	50,000		
Monthly kWh Used	180,000	32,500,000		
New York Average	\$0.1389	\$0.1228	-	-
Pennsylvania Average	\$0.0979	\$0.0724	41.814%	69.766%
Mid-Atlantic Average	\$0.1170	\$0.0964	18.749%	27.466%
Ohio Average	\$0.0860	\$0.0527	61.544%	133.087%
East North Central Average	\$0.0726	\$0.0489	91.226%	151.335%
U.S. Average	\$0.0836	\$0.0690	66.062%	78.071%

See Edison Electric Institute, Typical Bills and Average Rates Report – Winter 2006, pp. 128-30, 134, 136, 163, available at, <http://www.eei.org/products_and_services/index.htm>. Moreover, New York’s largest natural gas end-use consumers pay an annual average of 35.6% more than the national annual average price for natural gas. New York State Energy Research & Development Authority, Patterns and Trends – New York State Energy Profiles: 1990-2004, p. 5 (2005), available at, <<http://www.nyserda.org/publications/trends.pdf>>.

In addition, numerous environmental initiatives already have been implemented in the RGGI states, and are included in the non-competitive energy rates paid by consumers in those states. For example, in recent years, New York has implemented “Systems Benefits Charge” (“SBC”), “Retail Renewable Portfolio Standard” (“RPS”), and “Acid Deposition Reduction” (“ADR”) programs. It is estimated that these programs cumulatively increase electric rates for New York’s commercial and industrial electric consumers by as much as 9.5%.¹

¹ The SBC surcharge can range as high as 1.75% of an industrial end-user consumer’s monthly electric distribution bill. See NYSPSC Case No. 94-E-0952, Competitive Opportunities Regarding Electric Service, Order Continuing and Expanding the Systems Benefits Charge for Public Benefit Programs, p. 25 (2001), as adjusted NYSPSC Case No. 05-M-0090, System Benefits Charge III, Order Continuing the System Benefit Charge (2005). The RPS program is projected to increase electricity costs for large consumers by as much as 2.4%. NYSPSC Case No. 03-E-0188, Proceeding Regarding a Retail Renewable Portfolio Standard, New York Renewable Portfolio Standard Recommended Decision Cost Analysis, Table 13, p. 5 (June 3, 2004), but see NYSPSC, New York Renewable Portfolio Standard Cost Study Report II, Volume A, p. 2 (February 27, 2004) (RPS bill impacts for industrial electricity consumers could range as high as approximately 4.2%). And, the ADR program is projected to increase electricity costs on a state-wide average basis by 5.4%, with a consequential loss of 4,020 to 5,920 jobs. NYSDEC, 6 NYCRR Parts 237 and 238, Consolidated Regulatory Impact Statement, pp. 21-22, 23 (2003); NYSDEC, 6 NYCRR Parts 237-38, Consolidated Jobs Impact Statement, p. 20 (2003).

If implemented, RGGI will further exacerbate the competitive disadvantage that large end-use electric consumers in the RGGI states already face. During the course of developing the Draft Model Rule, economic modeling was conducted under two “scenarios” to determine the economic consequences of implementing the Model Rule: (a) the “standard reference run,” which is based on current projections regarding construction of new, (comparatively) low-emissions generation sources in the RGGI region; and (b) the “high-emissions reference run”, which is based on the assumption that 11,500 megawatts of new coal-fired electric generating capacity will be constructed in the RGGI region.²

The standard reference run model concluded that, absent federal implementation of a greenhouse gas emissions policy, implementing the Draft Model Rule would increase commercial and industrial electric costs by 0.5% to 1%. However, if a federal greenhouse gas emissions policy is implemented (which, significantly, is one of the stated goals for the RGGI program), electricity costs for commercial and electric consumers would increase by approximately 4.5% to 9%. Economic Development Research Group, REMI Impacts for RGGI Policies, pp. 4-5, (November 17, 2005), available at http://www.rggi.org/docs/remi_stakeholder_presentation_11_17_05-final.ppt.

Moreover, the high-emissions reference run model concluded that, absent a federal greenhouse gas emissions policy, implementing RGGI would increase commercial and industrial electricity costs from approximately 2% to 4%. However, if a federal

² Additional modeling was run under a “2-times present energy efficiency spending” scenario. Multiple Intervenors considers the factual assumptions that underlie this model run (i.e., that the RGGI states will double present ratepayer-funded spending on energy efficiency and that, as a result, significant increases in energy efficiency will be realized) to be too speculative to warrant further analysis. Accordingly, Multiple Intervenors does not address the 2x EE model run in these Comments.

greenhouse gas emissions policy is implemented, implementing RGGI would drive up commercial and industrial electricity costs by approximately 4% to 7%. Economic Development Research Group, REMI Impacts for RGGI Policies, pp. 4-5.

There is reason to believe that the economic impacts of implementing the Draft Model Rule may be understated. For example, the standard reference run economic model was premised on natural gas prices of approximately 2003\$5.00/MMBTu. See http://www.rggi.org/docs/ipm_docs_reference_case.xls. Similarly, the RGGI high-emissions reference run was premised on assumed natural gas prices of 2003\$7.00/MMBTu. See http://www.rggi.org/docs/ipm_docs_high_e-missions.xls. Recent developments in volatile short and long term gas markets render these gas price assumptions highly questionable and, as a result, the economic modeling results could be skewed significantly.³

Finally, there is the question of whether the RGGI economic model accurately reflects the true costs of implementing RGGI. For example, one document alleges that “policies to deliver meaningful end-use energy efficiency measures (both through RGGI and due to other state energy efficiency policies) are effective in sufficiently reducing total electricity usage by households so as to overcome the price increase impact of RGGI – resulting in a new reduction in expenditures on average across households.” RGGI Staff, RGGI Region Projected Household Bill Impacts, p. 1, available at http://www.rggi.org/docs/rggi_household_bill_impacts12_12_05.ppt. However, closer examination suggests that many of the alleged energy efficiency gains described in this

³ Moreover, the high-emissions reference run also was premised on the assumption that 11,500 mW of new coal-fired electric generating capacity would be constructed in the northeastern United States; an assumption that even RGGI Staff seemingly agree “represents an unlikely outcome.” RGGI Staff, RGGI, Frequently Asked Questions, p. 7, fn. 1 (March 23, 2006), available at http://www.rggi.org/docs/faqs_at_draft_mr_re-lease.pdf.

document do not derive from implementing RGGI but, instead, derive from existing or pending non-RGGI governmental programs and initiatives – all of which suggests that benefits from other programs are being counted as reductions to the costs of implementing RGGI. Moreover, many the remaining energy efficiency gains are premised entirely on speculation – both that additional funding for energy efficiency programs will be available and will result in actual net reductions of energy consumption by affected end-users. Id.

Multiple Intervenors is aware of still other claims that the RGGI modeling demonstrates that, under certain scenarios, there would be little or no economic impact on the RGGI states. However, the economic impacts outlined above are hardly immaterial.⁴ Moreover, neither the factual assumptions that underlie the RGGI modeling, nor the application of the economic modeling formulas to such assumptions, have been subjected to credible rigorous review by an independent entity. Given the potential dramatic adverse impact on economic development the RGGI states, at a minimum, the economic modeling and conclusions that underlie the current Draft Model Rule should be subjected to a rigorous independent review before the RGGI states accept any modeling results suggesting that economic impacts would be minimal.

In light of the above, it is clear that the Draft Model Rule will have significant, adverse economic impact on the RGGI states. Indeed, the above analysis suggests that the RGGI economic model results may significantly understate the true economic impacts of implementing the Draft Model Rule. Under these circumstances, the Draft Model Rule

⁴ As noted earlier, and by way of comparison, when it implemented the ADR program, the NYSDEC conducted modeling to determine the consequences of the projected ADR program-driven state-wide average electric rate increase of 5.4%, concluding that the consequence would be the loss of between 4,070 and 5,920 jobs in New York.

should not proceed at this time. At a minimum, the economic modeling conducted as part of developing the Draft Model Rule should be redone or at least subjected to rigorous independent review before a decision is made to implement the Draft Model Rule.

2. Implementing The Draft Model Rule Will Not Reduce Carbon-Dioxide Levels In The RGGI States

One of the primary justifications for implementing the Draft Model Rule is the premise that implementing the rule would control carbon-dioxide emissions, and thereby serve to address global climate change issues. See RGGI Memorandum of Understanding, p. 2, available at http://www.rggi.org/docs/mou_12_20_05.pdf. Reduction of carbon-dioxide emissions is a laudable goal. However, there is no direct link between the implementation of the Draft Model Rule and a corresponding direct effect on global climate change, or even climate change within the RGGI states.

It is generally recognized that carbon-dioxide emissions disperse worldwide within mere days after release. Thus, cutting emissions of carbon-dioxide gas in the RGGI region will not necessarily result in reductions in the levels of carbon-dioxide gas in the atmospheres of the respective RGGI states, or anywhere else. And, even if, arguendo, the RGGI states implement the Draft Model Rule and thereby reduce emissions of carbon-dioxide within the RGGI region, emissions of carbon-dioxide gas emissions from other states, or other countries such as China and India, or other regions such as South America, still will disperse worldwide within days of release. Thus, despite RGGI, carbon-dioxide levels in the RGGI states' ambient atmospheres could continue to increase absent a concerted federal, and even worldwide effort to implement effective controls on carbon-dioxide or other greenhouse gas emissions. These considerations suggest that implementation of the

Draft Model Rule is not likely to reduce overall levels of carbon-dioxide gas in the RGGI states' atmospheres.

To summarize Multiple Intervenors' concerns, implementing the Draft Model Rule will drive up electricity costs for the end-use electric consumers in the RGGI states. The impact of these price increases could result in job losses and further economic retreat for the RGGI states vis-à-vis the rest of the country and the world. Furthermore, while implementing the Draft Model Rule seemingly would reduce carbon-dioxide emissions in the RGGI states, to date, no one has established that there would be a corresponding reduction, or any reduction, in the level of carbon-dioxide in the ambient atmosphere affecting the RGGI states.

All of which is to say that the cost of implementing the Draft Model Rule drastically exceeds any direct environmental benefits that may flow to the electric consumers that must bear the costs. And, in light of this clear mismatch of costs versus benefits, Multiple Intervenors respectfully submits that the RGGI Draft Model Rule should not be implemented at this time. Rather, the issues associated with greenhouse gas emissions should be addressed at the national, or even global, level.

B. If The Model Rule Is Implemented, Then Costs To End-Use Consumers Should Be Mitigated To The Maximum Extent Possible

Assuming, arguendo, that some or all of the RGGI states proceed to implement the Draft Model Rule, or a similar rule, and given that electric consumers in the RGGI states will bear all of the economic impacts of implementing the Rule, Multiple Intervenors respectfully submits that the costs of implementing the Draft Model Rule to the end-use

electric consumers should be mitigated to the maximum extent possible. Further, Multiple Intervenors submits that the best means for mitigating the cost impacts to electric end-use consumers would be for each RGGI state to auction all of the RGGI emissions allowances and to apply all of the proceeds from such auctions as a direct per-kWh credit to retail electric distribution rates. In addition, the other mitigation measures described herein should be applied.

1. All RGGI Emissions Allowances Should Be Auctioned
And The Proceeds Should Be Applied As A Per-kWh
Credit To Retail Electric Distribution Rates

The RGGI Memorandum of Understanding (“MOU”) and the Draft Model Rule each call for 25% of the RGGI emissions allocations to be for “consumer benefit or strategic energy purposes,” which are defined as programs that: (a) promote energy efficiency; (b) directly mitigate electricity ratepayer impacts; (c) generate renewable or non-carbon-emitting energy technologies; (d) stimulate or reward investment in the development of innovative carbon emissions abatement technologies; and/or (e) fund administration of the RGGI program. RGGI Memorandum of Understanding, ¶ 2(G)(1); Draft Model Rule, § 5.3(a). However, the “consumer benefit” and “strategic energy purpose” programs can be classified into two groups: (a) programs that apply any proceeds from implementing the Draft Model Rule directly to electric rate relief; and (b) programs that apply any proceeds from implementing the Draft Model Rule as funding for new public policy initiatives.

Initially, Multiple Intervenors does not agree that only 25 percent of allocations should be used to benefit consumers. Given the likely significant economic and competitive harm to consumers in the RGGI states identified in Section A of these

Comments, it is imperative that all available steps be taken to mitigate the costs of implementing the Draft Model Rule. The best, and fairest, way to mitigate the economic harm to consumers in the RGGI states is to auction all of the RGGI emissions allocations, and apply all of the auction proceeds as a per-kWh credit to retail electric distribution rates.

Auctioning all of the RGGI emissions allowances for the direct benefit of consumers in the RGGI states and applying the auction proceeds as a per-kWh credit to retail electric distribution will ensure that the impacts of RGGI implementation on the customers that bear the costs of RGGI will be mitigated to the maximum extent possible. Consumers in the affected RGGI states already are struggling to pay electric bills that are far greater than similarly-situated consumers elsewhere in the nation and the world. If RGGI is implemented, the costs for energy consumers in the RGGI states will increase even further. However, auctioning the RGGI emissions allowances and utilizing the auction proceeds to provide direct per-kWh credits to those consumers will offset the increased costs that energy consumers surely will pay. To the extent necessary, the RGGI states should amend the RGGI MOU to describe a process for developing a regulatory program that can direct all auction proceeds to consumers as a per-kWh credit through the retail electric distribution rates of the regulated electric distribution utilities.

Multiple Intervenors does not believe that financial proceeds realized as a consequence of implementing the Draft Model Rule should be used to fund new spending for energy efficiency or environmental programs. As explained supra, electricity consumers in the RGGI region already fund numerous energy efficiency and environmental benefit programs. In addition, many other energy efficiency and environmental initiatives exist, or are pending, as a result of separate state and federal programs. For example, RGGI Staff

describe appliance and equipment energy efficiency standards as having been enacted recently in New York, New Jersey, Connecticut, Massachusetts and Rhode Island. RGGI Staff, RGGI Region Project Household Bill Impacts, p. 1. RGGI Staff also note that improved building codes recently have been enacted or are pending in Delaware, Maine, New Jersey, New York and Vermont. Id.

In light of these initiatives, as well as the numerous energy efficiency and renewables programs that are funded through electric rates (e.g., New York’s SBC, RPS and ADR programs), it is reasonable to conclude that the individual and collective RGGI states devote extensive resources to energy efficiency issues. And, there is no evidence that additional funding of similar initiatives is needed, or that it will result in meaningful consumer benefits. Moreover, diverting any proceeds that may be realized from auctioning the RGGI emissions allowances from electric consumer rate relief in order to fund additional spending on energy efficiency and renewables programs would deprive consumers of an effective offset to the increased costs of RGGI implementation. The bottom line is that because end-use electric consumers in the RGGI states must bear the costs to implement the Draft Model Rule, all proceeds that result from the RGGI emissions allowances auctions should be applied directly to mitigate retail electric rates for consumers.

2. If Implemented, The Draft Model Rule Must Energy
Flows And Thereby Drive Up Energy Costs

The RGGI region covers all or parts of three separate, but adjoining, electric energy markets: (a) all of the NYISO control area; (b) part of the PJM Interconnection, LLC (“PJM”) control area; and (c) part of the ISO New England, Inc. (“ISO-NE”) control area. Moreover, the three energy markets are not isolated from adjoining markets. Specifically,

additional energy markets lie to the north, west, and south of the NYISO, PJM and ISO-NE control areas.

Each the NYISO, ISO-NE and PJM energy markets, is responsible for scheduling and operating the bulk electric transmission system within its respective control area. However, physical, operational and legal constraints, which often are described as “seams issues,” limit the free flow of electricity between the NYISO, PJM, and ISO-NE markets. Moreover, similar seams issues exist with respect to the energy markets that border the NYISO, PJM and ISO-NE control areas. Given that seams issues amount to limitations on the free exchange of electric energy between the markets, where a seams issue exists, there is an actual or potential constraint on electricity supply. And, there is a direct relationship between a seams issue-based constraint on electricity capacity or supply and increased electric capacity and energy costs for end-use consumers.

The Draft Model Rule should be implemented, if at all, in a manner that will not further exacerbate seams issues or cause electricity reliability problems. Specifically, the Draft Model Rule, or any following implementation thereof, should not seek to resolve the so-called “imports and leakage” issue (see RGGI Memorandum of Understanding ¶ 6(A)) in a manner that exacerbates existing seams issues or creates new seams issues. In particular, the RGGI states should not try to solve the “imports and leakage” issue by adopting a “RGGI-compliant portfolio standard” that would require that retail electric energy sales in the RGGI states achieve prescribed levels of RGGI-compliant energy.

A RGGI-compliant portfolio standard would further balkanize regions within the PJM and ISO-NE markets because not all of the states that lie within the geographic borders of these markets have joined the RGGI program. Given that the RGGI states’

political boundaries do not match the NYISO, ISO-NE and PJM control area boundaries, applying a RGGI-compliant portfolio approach would amount to moving RGGI-compliant power through splintered PJM and ISO-NE markets, with the likely result that electric consumers in the RGGI states could face higher electric costs and reduced electric reliability. Given these considerations, Multiple Intervenors respectfully submits that the RGGI Staff working group that is addressing the “leakage and imports” issue should reject adoption of a RGGI-compliant portfolio standard or any similar approach to the problem.

C. If The Model Rule Is Implemented, Then The Following Issues Must Be Addressed

Multiple Intervenors position is that the Draft Model Rule must be harmonized with the RGGI states’ respective distributed generation programs. Moreover, the RGGI program should terminate automatically if the comprehensive review of the program that currently is planned for 2012 establishes that a comparable federal program has been implemented or that implementing the Draft Model Rule has externalized carbon-dioxide emissions into non-RGGI states. In addition, the RGGI states’ respective obligations to fund the regional organization described in the RGGI MOU should be clarified and limited. Finally, certain elements of the Draft Model Rule should be amended as described herein.

1. The Draft Model Rule Should Be Harmonized With The RGGI States’ Respective Distributed Generation And Other Energy Programs

Section 1.4(b) of the Draft Model Rule describes an “optional” partial exemption for units that serve electric generators that are larger than 24 mW and that are willing to accept air emissions permits that limit electric energy sales to less than or equal to

10% of the affected generator's annual gross generation. Multiple Intervenors understands this provision as affording affected industrial end-users with the opportunity to sell excess electric generation into the markets without thereby triggering significantly burdensome air emissions program requirements, which presumably benefits not only the industrial end-user but, in certain circumstances, could benefit all electric end users by making critical energy, capacity or ancillary services available to the grid.

However, Multiple Intervenors believes that Section 1.4(b) should be amended in a manner that would harmonize the Draft Model Rule with the various RGGI states' distributed generation policies. First, the rule should be amended to be consistent with the similar federal "Title IV" "behind the meter" exemption. Specifically, the calculation of the limitation on energy sales should be based on the electricity generator's net nameplate capacity, not the generator's annual gross generation. Moreover, the limitation on electric sales into the grid should be increased from equal to or less than 10% of the electricity generator's net annual mWh output capacity to the lesser of: (a) equal to or less than one-third of net annual mWh output capacity; or (b) 219,000 mWh. Furthermore, sources that limit energy sales to one-third or less of their affected electricity generator's net annual mWh output capacity should be exempted fully and automatically from the Draft Model Rule and/or the RGGI program, without further requirement to apply for the exemption and without further compliance obligations. See 40 C.F.R. § 72.6(a)(3), incorporating by reference 40 C.F.R. § 72.6(b)(ii).

In addition, Multiple Intervenors submits that the Draft Model Rule should be harmonized with the RGGI states' oversight of electric utilities programs. For example, New York statutes provide for significantly reduced regulatory structure for generators with

nameplate capacities of less than 80 mW. See e.g., N.Y. Pub. Serv. L., §§ 2-a through 2-c (definitions of co-generation, alternate energy production, and small hydro facilities). Given that New York’s Public Service Law fixes the point of differentiation for electricity generators at 80 mW, New York should draft its version of the RGGI regulations to provide that electricity generators of less than 80 mW nameplate capacity qualify for the “behind the meter exemption” described in Section 1.4(b) of the Draft Model Rule. Moreover, to the extent that other RGGI states apply electric generating capacity thresholds for purposes of determining the scope of electric utilities regulatory programs, these states also should draft their state-specific RGGI programs to provide the same generation capacity threshold for the “behind the meter” exemption to the RGGI program.

2. The RGGI Program, And All RGGI Regulations, Should Terminate Under Certain Circumstances

The RGGI MOU establishes a comprehensive review process and sets 2012 as the deadline for the review. RGGI Memorandum of Understanding ¶ 6(D). However, the memorandum does not describe action to be taken in the event that the review establishes that certain goals have, or have not, been met. Moreover, the MOU provides that, if the RGGI states determine that implementation of the Draft Model Rule has resulted in significant air emissions increases from electric generators outside of the RGGI states, the RGGI states are to implement unspecified “appropriate measures to mitigate such emissions.” Id. ¶ 6(A)(6). As explained herein, Multiple Intervenors respectfully submits that the RGGI program, including all implementing statutes and regulations in the respective RGGI states, should terminate under certain circumstances.

The RGGI program should terminate automatically if the 2012 review, or any other review, determines that a comparable federal program has been implemented. One of the principal reasons for implementing the Draft Model Rule is to encourage the federal government to establish a regulatory approach to greenhouse gas emissions. However, while the RGGI MOU provides that if a “comparable” federal program is established, the RGGI states will transition into the federal program, there is no express statement that at the conclusion of such transition the RGGI program will terminate. See RGGI Memorandum of Understanding ¶ 6(C). In order to resolve any potential ambiguity or confusion that may arise if and when such a comparable federal program is established, the RGGI states should agree that the RGGI program will terminate automatically, either in its entirety or after a period of transition into the federal program.

Further, the RGGI program should terminate if the 2012 review, or any subsequent review, establishes that one result of implementing the Draft Model Rule, or other rules under the RGGI program, is that carbon-dioxide emissions from electricity generators in non-RGGI states or regions have increased significantly. See RGGI Memorandum of Understanding, ¶ 6(A)(5). One of the cardinal principles of environmental regulation is that implementing a new regulation or program must not result in “externalizing” costs from the entity or region that is newly subject to the regulation to an entity or region that is not subject to the regulation. See e.g., Platter, Environmental Law and Policy, p. 37 (West, 2d ed. 1998). Accordingly, in the event that 2012 review, or any other program review, establishes that implementation of the Draft Model Rule has resulted in increased carbon-dioxide emissions in non-RGGI states or regions, then the RGGI program, and all implementing state statutes and regulations, should terminate.

3. The RGGI States' Obligations To Fund The Regional Organization Described In The RGGI MOU Should Be Clarified And Limited

Article 4 of the RGGI MOU establishes a regional organization for the purpose of providing technical assistance to the RGGI states. In addition, the MOU provides that the RGGI states are to fund the regional organization. However, the scope and means of the funding obligation is not explained. Multiple Intervenors respectfully submits that the RGGI states should limit the scope of their respective funding obligations for the regional organization and, moreover, that the RGGI states should clarify that the regional organization shall not be funded from proceeds derived from any auction of RGGI emissions allocations.

The RGGI states should limit the scope of their respective funding obligations for the regional organization in such a manner to ensure that the organization is operated with maximum efficiency. As noted, supra, energy consumers in the RGGI states can ill afford any spending that could add to their cost of electricity. Multiple Intervenors submits that the RGGI states should protect their electric consumers by limiting their respective funding obligations for the regional organization described in the RGGI MOU.

One means of capping the funding obligation for the regional organization would be to make funds available only from each state's general budget or tax revenues. In this manner, funding requests for the regional organization would be subject to the review and scrutiny of the respective RGGI states' legislatures, thereby furnishing a powerful incentive to limit costs and expenses only to those that are easily demonstrated to be absolutely necessary for the continued effective implementation of the Draft Model Rule. And, for the reasons already cited, under no circumstances should proceeds from auctions of

RGGI emissions allowances be diverted from direct rate relief to end-use electric consumers to pay for the regional organization.

4. The Draft Model Rule Should Be Amended As Provided
Herein

Multiple Intervenors is aware that significant resources and time were applied to develop the Draft Model Rule. However, the two amendments described herein should clarify the scope and operation of the RGGI program.

Initially, Multiple Intervenors respectfully submits that a new term should be added to the “definitions” section of the Draft Model Rule. Specifically, given that the Rule applies only to units that serve certain “electricity generators” (see Draft Model Rule §1.4), Multiple Intervenors submits that a term “electricity generator” should be added to the rule, and that the term be defined as “a unit that produces electricity.” Assuming that this suggested addition is accepted, the existing definition of “gross generation” would need to be amended to reference an “electricity generator” as opposed to the current reference to an (undefined) “generator.”

Next, Multiple Intervenors submits that Section 5.3 should be amended to limit allocations of “CO₂ allowances” to a regulatory agency or entity. There should be no other initial allocations to any other parties (although any person would remain free to purchase CO₂ allowances through the emissions credits auctions, in any secondary markets or trading programs).

V.

CONCLUSION

Based on the foregoing, Multiple Intervenors respectfully submits that the RGGI states should not implement the Draft Model Rule at this time. However, if, arguendo, the Draft Model Rule is implemented, it should be amended and implemented only as described herein.

Dated: May 22, 2006
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