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**VIA ELECTRONIC MAIL**

Ms. Nicole Singh  
Executive Director  
Regional Greenhouse Gas Initiative, Inc.  
90 Church Street – 4<sup>th</sup> Floor  
New York, New York 10007  
info@rggi.org

**Re: 2016 RGGI Program Review**

Dear Ms. Singh:

In response to Regional Greenhouse Gas Initiative, Inc.'s ("RGGI, Inc.") request for stakeholder input as part of the 2016 Program Review, the Biomass Power Association ("BPA") is pleased to submit the following comments.

The BPA is the nation's leading organization working to expand and advance the use of clean, renewable biomass power. The BPA represents 80 biomass power plants in 20 states across the U.S. Increasing America's use of biomass and other renewable energy is the first step in combating climate change and reducing our reliance on fossil fuels. Biomass power generates carbon-neutral electricity from natural organic waste, providing sustainable energy.

One issue being evaluated as part of this program review – "RGGI Regulated Sources" – is of particular importance to the BPA. As noted in the agenda for the stakeholder meeting that took place on November 17, there are differences in the applicability of RGGI and the recently finalized federal Clean Power Plan ("CPP"):

The RGGI states are seeking stakeholder comments on how best to address the fact that the RGGI cap includes emissions from more regulated sources than the CPP for compliance.

RGGI was designed to reduce CO<sub>2</sub> emissions from fossil fuel-fired electric generating units ("EGUs"), and RGGI generally applies only to such units. Accordingly, the vast majority of biomass-fired EGUs in the RGGI region are not subject to the program. However, an ambiguity in the current version of the RGGI regulations means that some states require formerly fossil fuel-fired EGUs that

have permanently repowered to combust primarily biomass to continue to purchase CO<sub>2</sub> allowances under RGGI – notwithstanding that those facilities do not combust anywhere near the amount of fossil fuels necessary to be defined as “fossil fuel-fired” under RGGI’s definition of that term. This interpretation of RGGI’s provisions effectively discourages the repowering of fossil fuel-fired facilities to combust biomass, which is antithetical to RGGI’s policy objective of reducing CO<sub>2</sub> emission from fossil fuel-fired EGUs. The U.S. Environmental Protection Agency (“EPA”) recognized the counterproductive nature of a “once in, always in” rule by expressly rejecting it in the CPP. The RGGI rule should be revised or clarified to make it plain that EGUs that repower to combust primarily biomass are no longer subject to RGGI.

### **Discussion**

The policy objective of RGGI is the mitigation of anthropogenic climate change through stabilization and reduction of “CO<sub>2</sub> emissions from fossil fuel-fired electricity generating units.”<sup>1</sup> The RGGI program requires electric generators that burn fossil fuels to obtain CO<sub>2</sub> allowances for their CO<sub>2</sub> emissions, as the burning of fossil fuels is generally considered the most significant source of such emissions and thus one of the primary drivers of climate change. Repowering a formerly fossil fuel-fired EGU to combust biomass perfectly aligns with the policy objectives of RGGI because it represents the direct substitution of a renewable and carbon neutral form of energy for previous fossil fuel combustion. The voluntary conversion of a formerly fossil fuel-fired EGU to a biomass-fired facility represents an infusion of renewable energy into the grid and a corresponding direct reduction of CO<sub>2</sub> emissions resulting from fossil fuel combustion. In recognition of the benefits of such conversions from a climate change perspective, fossil fuel-fired EGUs that permanently repower to combust biomass are expressly excluded from the definition of “Affected EGUs” under the CPP. The basis for this exclusion is EPA’s determination that biomass generation that replaces fossil-derived energy can “control CO<sub>2</sub> levels in the atmosphere.” EPA has consistently recognized the “distinction between modern biological materials (e.g., non-fossil) that circulate carbon on policy-relevant time frames and materials such as fossil fuels or peat that circulate carbon on much longer geologic timescales.” As noted by EPA in its 2014 Framework for Assessing Biogenic CO<sub>2</sub> Emissions from Stationary Sources<sup>2</sup>, “[a] key implication of this distinction is that the production and use of biogenic feedstocks and subsequent biogenic CO<sub>2</sub> emissions from stationary sources will not inevitably result in an increased net flux of biogenic CO<sub>2</sub> to the atmosphere within a policy-relevant time scale, unlike CO<sub>2</sub> emissions from combustion of fossil fuels.”

The CPP makes clear that biomass “has the potential to offer a wide range of environmental benefits, including carbon benefits.” Because of these benefits, states are encouraged to incorporate “qualified biomass” (waste-derived, forest-derived and sustainably sourced biomass) in state implementation plans.

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<sup>1</sup> December 20, 2005 Regional Greenhouse Gas Initiative Memorandum of Understanding, ¶ 1 ([www.rggi.org/docs/mou\\_final\\_12\\_20\\_05.pdf](http://www.rggi.org/docs/mou_final_12_20_05.pdf)).

<sup>2</sup> November 14, 2014, Framework for Assessing Biogenic CO<sub>2</sub> Emissions from Stationary Sources, ¶ 1 (<http://www3.epa.gov/climatechange/downloads/Framework-for-Assessing-Biogenic-CO2-Emissions.pdf>).

The CPP establishes CO<sub>2</sub> emission performance rates for the two types of affected electric generating units (“Affected EGUs”): (1) fossil fuel-fired EGUs (generally, coal-fired power plants); and (2) natural gas-fired combined cycle generating units.

A formerly coal-fired EGU that has been re-powered to primarily burn biomass is excluded from the definition of an Affected EGU in the CPP:

(a) EGUs that are excluded from being an Affected EGU are: ...

(3) Non-fossil units (i.e., units that are capable of combusting 50 percent or more non-fossil fuel) that have always historically limited the use of fossil fuels to 10 percent or less of the annual capacity factor ***or are subject to a federally enforceable permit limiting fossil fuel to 10 percent or less of the annual capacity factor.***

40 CFR § 60.5850 (emphasis added). In other words, the CPP does not follow a “once in, always in” approach. A re-powered EGU that may have once satisfied the definition of an “Affected EGU” can be excluded from that definition if its federally enforceable permit limits fossil fuel to 10% or less of its annual capacity factor.

The CPP reiterates its rejection of a “once in, always in” approach for repowered facilities in a subsection entitled “Biomass repowerings.” Among other things, that section states: “An EGU with at least 90 percent biomass fuels instead of fossil fuels ***becomes*** a non-affected EGU.” (Emphasis added.) The footnote to this sentence states:

For such an EGU to be considered non-affected, the EGU must be subject to a federally enforceable or practically enforceable condition, expressed in (for example) a construction permit or otherwise, that limits the amount of fossil fuel that may be used to 10 percent or less.

Notably, the CPP generally acknowledges the CO<sub>2</sub> and climate policy benefits of waste-derived biogenic feedstocks and certain forest- and agriculture-derived industrial byproduct feedstocks. This is why the CPP incentivizes EGUs to cease burning fossil fuels in favor of biomass by exempting such re-powered facilities from the CPP. The RGGI states should expressly and unambiguously adopt a similar approach.

Under Section 1.4(a) of the Model Rule, RGGI is applicable to CO<sub>2</sub> budget units, which are defined as any “unit” that at any time on or after January 1, 2005, serves an electricity generator with a nameplate capacity equal to or greater than 25 MWs. Consistent with the policy objectives of RGGI, “unit” is in turn defined as “a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.” Model Rule § 1.2(bu). For units that commenced operation in 2005 or later, “fossil fuel-fired” means “the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or is projected to comprise, more than five percent of the annual heat input on a Btu basis during any year.” Model Rule § 1.2(au)(2).

Based on these definitions, a question has arisen in some states (*e.g.*, New York) over whether RGGI should apply to EGUs that in previous incarnations satisfied the criteria of “fossil-fuel fired”

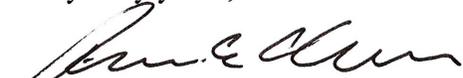
but no longer satisfy those criteria and will never satisfy those criteria again because they have repowered to combust primarily biomass. The definition of “fossil fuel-fired” under Section 1.2(au) of the Model Rule is subject to multiple interpretations. The definition can mean that if a unit’s annual heat input is comprised of 5% or less of fossil fuel “during any year,” the unit is not fossil fuel-fired for that year. Another possible interpretation is that the phrase “during any year” creates a “once in, always in” scenario – meaning that EGUs that once but no longer satisfy the definition of “fossil fuel-fired” will forever be classified as such for RGGI applicability purposes.

Interpreting the definition of “fossil fuel-fired” in Section 1.2(au) of the Model Rule as requiring perpetual applicability of RGGI to EGUs that have repowered to combust eligible biomass and thus no longer (and will never again) satisfy the definitional criteria is antithetical to RGGI’s objective of reducing CO<sub>2</sub> emissions from combustion of fossil fuels. Under a “once in, always in” reading of RGGI, while an EGU that was once fossil fuel-fired but has since repowered to combust biomass remains subject to RGGI and must purchase CO<sub>2</sub> allowances (for the fraction of its fuel that does not satisfy the definition of “eligible biomass”), an identical new biomass-fired EGU *is not subject to RGGI at all*. Such a “once in, always in” interpretation of RGGI is environmentally counterproductive and acts as a disincentive for facilities to repower away from fossil fuels. Operators of current fossil fuel-fired EGUs would be more likely to cease burning coal, oil, or natural gas if they knew that by permanently repowering to combust primarily eligible biomass they would no longer need to purchase CO<sub>2</sub> allowances under RGGI.

Notably, there does not appear to be any text in the RGGI Memorandum of Understanding mandating a “once in, always in” policy. If anything, the rejection of a “once in, always in” is consistent with Section 7 of the MOU, which requires each state to “maintain, and where feasible, expand energy policies to decrease the use of less efficient or relatively higher polluting generation while maintaining economic growth.”

In recognition of the climate change benefits realized when fossil fuel-fired EGUs convert to combusting primarily biomass, the RGGI states should follow the lead of the EPA in the CPP by incentivizing EGUs to permanently repower to combusting biomass. Accordingly, the RGGI rule should be revised or clarified to make it plain that EGUs that permanently repower to combust primarily biomass are no longer subject to RGGI.

Very truly yours,



Robert Cleaves, President & CEO  
Biomass Power Association