NORTHEAST ENVIRONMENTAL JUSTICE AND CLIMATE JUSTICE REGION WIDE STAKEHOLDER COMMENTS TO RGGI

December 3, 2021

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Mr. McKeon:

We, the undersigned, submit the following comments on behalf of Northeast Regional members of the Climate Justice Alliance (CJA). We represent frontline grassroots environmental justice, climate justice, and ally organizations located in and working with communities throughout the Regional Greenhouse Gas Initiative (RGGI) participating states. As RGGI Inc. embarks on its Third Program Review to consider program impacts, design elements, and additional reductions to the cap post-2030, we want to ensure that environmental justice priorities and state climate mandates are embedded into the program. Since its inception, many of our organizations have engaged with RGGI at the regional and state levels to uplift our concerns and community priorities.

RGGI's cap-and-trade scheme does not guarantee greenhouse gas (GHG) emissions and co-pollutant reductions in environmental justice communities, including black, indigenous, communities of color, and low-income communities that have historically been disproportionately impacted by the siting of polluting power plants and other polluting infrastructure. Furthermore, RGGI's market-based strategy has failed to drive emission reductions in the region because it is not aligned with aggressive economy-wide GHG reductions targets. It is in our view a fundamental policy design flaw that RGGI attempts to address concerns about equity at the back-end, in the allocation of funding, rather than at the front end, in the policy design. In our experience, "equity" and "modeling/technical" conversations have largely been siloed, with input from overburdened and underserved communities only informing the former. This, coupled with the fact that prior Program Reviews have failed to incorporate findings from engagement with our organizations and other EJ/CJ stakeholders into policy design, demonstrates that the participating states' engagement on equity in RGGI is both lacking accountability and treated as an afterthought.

We urge RGGI Inc. to incorporate the following recommendations in the Third Program Review:

Tie the Cap to Statewide Climate Goals and Reduce Pollution.

The RGGI cap is arbitrary, and it fails to drive the necessary emissions reductions to match the urgency of the climate crisis or the cumulative and compounding impacts on environmental justice communities. Currently, the RGGI cap is not aligned with individual state climate targets, such as New York and Massachusetts, which passed aggressive climate laws since the last program review. RGGI should account for the mandated shifts toward renewable energy and expected emissions reductions, such as including the outcomes of existing state renewable energy targets in the power sector into the analysis for the cap and overall emission reduction targets.

The current RGGI cap levels came out of an agreement struck by the RGGI states in 2017, prior to the passage of new state climate laws. In 2019, New York passed the Climate Leadership and Community Protection Act (CLCPA), which mandates that 70% of New York's electricity needs be met by renewable energy resources by 2030 and 100% zero emissions resources by 2040. New York must achieve 85% emission reductions and 100% carbon neutral by 2050 economy-wide. The New York State Department of Environmental Conservation cited the CLCPA as the baseline for rejecting fossil fuel power plant renewals in Astoria and Danskammer. In 2021, Massachusetts passed a law requiring the state to achieve net-zero emissions by 2050 economy-wide. Massachusetts must achieve 50% emissions reduction by 2030 and 75% emissions reduction by 2040. Connecticut's climate legislation also mandates the state to achieve 80% emissions reduction by 2050. The Third Program Review's proposed reductions to the cap on carbon pollution must be aligned with the most aggressive emission reductions and renewable energy targets established by RGGI participating states. Additionally, the RGGI states should tighten the cap starting in 2025, rather than waiting until 2030 to increase ambition.

Furthemore, there is a danger that RGGI will undermine these ambitious state goals, even if the cap is tightened. As described above, many states have emission reduction goals for a particular year (for example, Massachusetts 75% by 2040 goal), but the RGGI program allows emitters to accumulate banked allowances from the early years of the program and use them in later years. Allowance banking could lead states to believe they're meeting their goals, while in reality emitters are complying by using banked allowances without making real reductions. We recommend ending the practice of banking allowances by announcing a sunset date for all unused allowances from past years that are currently in circulation, with a short 3-month window of time between the announcement and the sunset date. Further, we recommend that all allowances sold in future auctions have an expiration date of 12 months from the auction date.

Strengthen the Program by Improving the Emissions Containment Reserve, Price Floor, Cost Containment Reserve, and Banked Allowances.

We encourage the RGGI states to increase the Emissions Containment Reserve (ECR) trigger price and the volume of withheld allowances. The ECR plays an important role in the market by capturing opportunities for low-cost pollution reduction. However, Potomac Economics, whom RGGI commissions to publish a market review report each year, found that market participants' behavior in 2020 suggests that they don't expect the ECR to be triggered until the end of the decade.[1] In other words, current evidence suggests that the ECR will not play a significant role in reducing emissions this decade. The RGGI states should take greater advantage of this tool to strengthen the program and reduce pollution. The ECR trigger price, which is currently $6 per ton and rising to $11 in 2030, should be increased to reflect the aggressive emission reductions the states need to achieve. Increasing allowance withholdings above the current 10 percent limit is a meaningful way to ensure that low emissions prices benefit the environment and affected communities rather than the polluters.

We also encourage the RGGI states to increase the price floor and establish a more ambitious rate of increase. The price floor in 2021 is $2.38 per ton, with a 2.5% rate of increase to account for inflation. This number is many magnitudes too small compared to the harms caused by carbon pollution. Additionally, a rate of increase that does no more than compensate for inflation is inconsistent with a program that is meant to increase in ambition over time.

[1] 2020 Annual Report pg. 7, https://www.rggi.org/sites/default/files/Uploads/Market-Monitor/Annual-Reports/MM_2020_Annual_Report.pdf

We urge the RGGI states to reform the Cost Containment Reserve (CCR) to serve its fundamental purpose of protecting the electricity market when outside events cause allowance prices to skyrocket, rather than enabling polluting facilities to avoid aggressive emission reductions. The CCR is meant to release new allowances and increase the emissions cap when allowance prices become too prohibitive. However, the current CCR trigger price of $13, rising at 7% per year, is a modest price that represents reasonable emission reduction costs, and it is likely to trigger the release of new allowances during normal market conditions. A trigger price three or four times greater would better serve the CCR's purpose. Further, we encourage the RGGI states to reduce the size of the CCR reserve so that fewer allowances are released when triggered and to compensate for any CCR allowance releases by lowering the cap in later years by a comparable amount.

We further urge the RGGI states to make another adjustment to the allowance bank. RGGI has already made three bank adjustments, and these adjustments have become a meaningful way to account for low program compliance costs and the need for increased ambition. This is only more critical now, as many RGGI states articulate strong climate goals for 2040 and 2050. When RGGI tightens its cap and strengthens the auction mechanisms, facilities will be able to use allowances they have banked in the early, low-cost years of the program and avoid making aggressive emission reductions. RGGI's large bank will undermine states' emission goals by giving polluting facilities a way to comply without making real reductions. Currently, there is a massive bank of surplus allowances: 95 million allowances have been carried over from the early years of RGGI. The RGGI states have addressed this by imposing the third interim adjustment to the cap, but it remains to be seen whether this adjustment will adequately trim down the bank. In 2020, firms held more allowances than they needed to comply with the program, suggesting that firms are continuing to add allowances to the bank, even despite the adjustment.[2]

Assessing and Reducing Cumulative Burdens in Environmental Justice Communities.

RGGI should collect and make publicly available spatially-explicit data that identifies where emissions reductions are happening, so that communities throughout the RGGI states can identify if emissions reductions are taking place locally. A recent study of California's cap-and-trade system found that overall emissions reductions do not necessarily result in localized reductions, particularly in environmentally overburdened communities. While RGGI is distinct from California's system, this study demonstrates the need for analyses of how RGGI is impacting greenhouse gas and co-pollutant emissions in EJ/CJ communities throughout all the participating states. A study published in PLOS Medicine found that in the first three years of California's carbon trading program, emissions increased at over half of the covered facilities, and the neighborhoods that experienced increases in annual average emissions had higher proportions of people of color and poor, less educated, and linguistically isolated residents, compared to neighborhoods that experienced decreases in emissions.[3]

We urge the RGGI states to investigate and address the serious possibility that the cap-and-trade program is failing to reduce or is even increasing pollution exposure in environmental justice communities. This has been documented in other cap-and-trade programs. In the northeast, EIA data from 2013 to 2020 shows that several plants sited in EJ communities have seen CO2 and local

[2] 2020 Annual Report pg. 8, https://www.rggi.org/sites/default/files/Uploads/Market-Monitor/Annual-Reports/MM_2020_Annual_Report.pdf

[3] Cushing, Lara et al., Carbon trading, co-pollutants, and environmental equity: Evidence from California's cap-and-trade program (2011–2015), PLOS Medicine (2018), https://doi.org/10.1371/journal.pmed.1002604.

pollutant emissions levels increase.[4] This preliminary analysis validates the concern that, although emissions across the board may have fallen, RGGI has not delivered the promised reductions in EJ communities.

Therefore, RGGI Inc. should conduct an ongoing place-based equity analysis and report on the distribution of emissions reductions, including a cumulative burden analysis that considers the proximity of multiple power plants, including facilities below the 25 Megawatt threshold. RGGI should then take into consideration any findings of disproportionate burden and emissions on specific communities in decision-making procedures so that states can target disproportionately impacted communities for local emissions reductions. We insist that RGGI Inc. and the participating states conduct a proximity analysis of covered plants to determine which neighborhoods have not seen emissions reductions. Furthermore, in the Third Program Review RGGI Inc. and Participating States should also explore strategies and policies to further drive down co-pollutants in disproportionately impacted communities. For example, this is an opportunity for the most stringent Environmental Justice laws and regulations in the region to be made a floor, not a ceiling, for the RGGI program.

Lower Compliance Threshold and Close Loopholes.

Currently, the RGGI Model Rule is only applicable to generators with a capacity equal to or greater than 25 megawatts. In 2017, New York environmental justice advocates uncovered regulatory language that has provided a loophole for facilities consisting of multiple combustion turbines that individually do not meet the 25 megawatt (MW) threshold. As of 2021, the New York State Department of Environmental Conservation (NYS DEC) decided to go beyond the 2017 RGGI Model Rule and close the loophole that has allowed many peaking facilities to avoid compliance with RGGI. The regulation requires electric generating facilities, currently operating with multiple units that are individually under the 25 MW threshold but over 15 MW, to comply with RGGI and finally pay for their carbon pollution. For example, in New York State many power plants with multiple generating units of power plants are now covered by the program, including an estimated 14 power plants and 73 generating units representing over 1,350 Megawatts (MW). These numbers include two large outdated polluting peaker plants in Brooklyn – Gowanus (640MW) and Narrows (352MW) – that previously utilized the peaker loophole to evade the RGGI program. Given the disproportionate impact of fossil fuel peaking facilities and co-located facilities on environmental justice communities, the inclusion of this provision is a small step in meeting a critical component of New York's CLCPA requiring state agencies to prioritize reductions of greenhouse gas emissions in disadvantaged communities. This disproportionate impact is true in many environmental justice communities across the Northeast region, and a similar approach should be implemented within the RGGI Model Rule.

The new RGGI Model Rule must also capture these facilities by closing this unconscionable legal loophole and ensuring these facilities are in compliance. The loophole means that a new 44 MW combustion turbine would need to obtain allowances for its climate pollution, yet two 22 MW combustion turbines—such as those recently proposed by the Massachusetts Institute of Technology—would have no obligation to internalize the costs of their emissions and would not fall under the regional cap. There is little justification, based on climate impact, economics, or otherwise, for exempting such aggregated facilities from RGGI requirements. To address this and other

[4] Emissions by plant and by region, Energy Information Administration, https://www.eia.gov/electricity/data/emissions/. We matched EIA's plant-level emissions data with a list of power plants located in or near EJ communities in the RGGI region. See Preliminary Analysis, https://docs.google.com/spreadsheets/d/1Luga8PHwX9ZGVmT4j1V8pmJRZXbIPAtG/edit?usp=sharing&ouid=114156658046704055639&rtpof=true&sd=true.

concerns, the RGGI Model Rule should lower the threshold to regulate a wider range of polluting facilities. We recommend that RGGI Inc. lower the overall nameplate capacity threshold to 15 MW, and lower the threshold for co-located units to 10 MW. This change will bring a significant number of generating units into the RGGI program. Relying on Energy Information Administration data on electric generation plants, we estimate that this would add approximately 38 additional fossil fuel and biomass plants across the RGGI states to the program.[5]

Expand Qualifying Polluters and Rejecting False Solutions.

We believe that the current list of qualifying polluters in the RGGI program is inadequate. We are gravely concerned about any form of combustion energy, including but not limited to coal, gas, trash, or biomass, that has serious public health impacts, especially in already overburdened communities. Biomass units and other waste incineration options are more carbon intensive than coal, and produce a host of other toxic and criteria air pollutants that disproportionately affect low-income people and people of color. The RGGI Model Rule does not definitively exclude biomass, refuse derived fuel (RDF), and trash incineration (often referred to as waste-to-energy or WTE) as renewable energy, and there are no restrictions on RGGI states using auction proceeds revenue to support these facilities throughout the region. In New Jersey, just five incinerators have emitted 7 million tons of greenhouse gases between 2015 and 2018 alone, and egregiously collected over $30 million in clean energy subsidies since 2004. Similar incinerator pollution and inequitable subsidies exist throughout RGGI states, including New York and Massachusetts. The RGGI Model Rule should be re-written to expressly exclude biomass, combustion, and WTE from its definition of renewable energy, and RGGI should exclude these projects from funding from auction proceeds.

RGGI should rigorously develop mechanisms to incorporate false solutions into the Third Program. Proposed constructions of hydrogen combustion power generating facilities ought to be included as part of qualifying polluters. Science clearly shows that production of hydrogen derived from fossil fuels, even when combined with carbon capture and storage (CCS), will actually result in higher greenhouse gas (GHG) emissions – particularly of methane – than burning gas or coal. The combustion of hydrogen also generates dangerous nitrogen oxide (NOx) emissions in environmental justice communities in RGGI regions. The Program should develop methods to capture the emissions from fossil fuels used to generate hydrogen or GHG-equivalent NOx emissions. We vehemently oppose all types of false solutions to receive program benefits, and believe there should be policies in place so that generation methods like natural gas (including so-called renewable natural gas) and new nuclear are folded into the RGGI mechanism.

All forms of combustion energy detailed above are qualifying polluters should be defined as covered entities under RGGI, therefore requiring them to purchase allowances for their emissions similar to current RGGI-qualified power plants. Furthermore, RGGI should also subsume refired power plants for purposes other than power generation back into the program, most notable for usage of cryptocurrency mining. Bitcoin mining operations on the shores of Seneca Lake, New York by Greenidge Generation and in north Tonawanda by Digihost, both using retired natural-gas power plants, have emitted impermissible levels of greenhouse gases, among other environmental hazards.

Eliminate Offsets to Drive Real Emission Reductions.

[5] This includes industrial and commercial plants and biomass-fired plants. Only plants between 15 and 25 MW in the RGGI states (excluding New York) are included. U.S. Energy Atlas, Energy Information Administration, https://atlas.eia.gov/search?categories=electricity&source=u.s.%20energy%20information%20administration.

We urge that offsets be eliminated as a compliance option, as it undermines localized emissions reductions and transitions to renewable energy. Usage of offsets by emitters create an illusion that climate change and related hazards can be addressed without actual necessary upgrades, transitions, and compensations. Emitters may purchase offsets outside of RGGI Inc's jurisdiction while continuing to expose pollutants and exceed intended program cap. While RGGI limits offsets to 3.3% of a facility's allowance submission and only permits a narrow range of offset project types, we still strongly believe that a precedent should not be set for offsets to be permissible under any circumstances. Offsets make it permissible for large polluters to continue shifting environmental burdens to nearby communities that are primarily low-income and people of color. Offsets have been identified as a key contributor to pollution hotspots in environmental justice communities in other cap-and-trade schemes. For example, the recent study of California's cap-and-trade system referenced above demonstrated that larger emitters - those of particular environmental health concern - were the most likely to use offset projects to meet their obligations under the cap-and-trade program. To date, only one offset has been utilized in RGGI, further proving its lack of necessity. As such, RGGI should prioritize localized and in-state emission reductions and eliminate all offsets.

Investing in Communities to Advance a Just Transition.

In accordance with the federal Justice40 initiative and New York's CLCPA codified equity mandates, RGGI revenues must prioritize direct investments in environmental justice communities, frontline communities, and disadvantaged communities. For RGGI to come close to being equitable, the level of investment should be at least proportional to the percentage of the population that meets the definition of "overburdened and underserved" in each state. To ensure that investments actually reach the populations most in need of this funding, we request that the model rule specify that a minimum of 40%-50% of investments, not benefits from those investments, be allocated to our communities. This 40% mandate is in line with state and federal precedent. While RGGI revenue investments are decided by the individual participating states, there should be regional guidance to ensure there is equity across the region.

Additionally, RGGI funds should not be raided to fund other areas. For example, advocates in New York recently had to oppose the Governor's 2021-22 budget proposal to do precisely that: raid RGGI revenues to plug State budget gaps. Since 2014, $228 million (17.5% of the total) of RGGI funds have been raided by the state, depriving New Yorkers of funding that could have lowered energy bills, created good jobs, and helped reduce carbon emissions. RGGi must ensure that similar tribulations do not occur throughout the region.

The relevant State agencies across the Northeast should continue to expand and develop programs and grant opportunities that adequately support community energy planning and community ownership in the transitions to renewable and resilient energy systems. Funding should also be made available for the development of community driven Just Transition plans to identify the needs – and the resources necessary to address those needs – of communities impacted by the shift away from a fossil-fuel based economy. Finally, RGGI proceeds should contribute to the programs that match the needs of the communities, these may include investments that result in:

- Reduction in localized pollution from stationary and mobile sources and related health benefits;
- Economic benefits, including but not limited to job creation, energy efficiency savings, utility bill assistance, energy resilience, and community ownership of renewable distributed energy resources;

- Health benefits related to reduction in thermal vulnerability and exposure to extreme heat and cold, as well as improved indoor environmental quality resulting from the mitigation and abatement of legacy environmental hazards (e.g., lead, asbestos);
- Job training, apprenticeship programs, entrepreneurship opportunities and small business support especially for historically marginalized residents and youth, both now and as public and publicly leveraged investment expands employment in emerging clean energy sectors including community-based models for inclusive job creation, such as UPROSE's Green Resilient Industrial District (GRID) proposal for Sunset Park, Brooklyn and PUSH Buffalo's Green Development Zone on the West Side of Buffalo; and RUN-GJC community led microgrids in Chelsea, MA and Chinatown, Boston.
- Funding, education, and resources for existing local businesses to adopt climate adaptive and mitigative practices, designs, and operations;
- Workforce and business funding and technical support programs to prevent clean energy transition-related worker displacement;
- Quality of life benefits, such as housing security and protection from neighborhood displacement, as well as increased access to mass transit/active mobility, green infrastructure, recreational green spaces, and public amenities; and
- Benefits related to democratic participation, such as access to community-determined climate and clean energy planning and decision-making processes and accountability frameworks.

We further request that RGGI Inc. and the participating states take steps to ensure that investments are not only being distributed equitably but that the benefits are being felt by EJ populations and frontline communities. In Massachusetts, for example, the bulk of RGGI proceeds are allocated to the state's energy efficiency program, Mass Save. Massachusetts has been ranked number one for energy efficiency in the country for many years, but during that time, advocates have been pushing the Mass Save Program Administrators and state agencies to address gaps in service to renters, communities of color, and low to moderate income people. Until and unless the inequities of programs like Mass Save are addressed, RGGI will continue to be inequitable.

Prioritizing Air Quality Monitoring.

We urge the participating jurisdictions to shift away from a mindset of considering policies characterized as "complementary" to RGGI, including air quality monitoring and mitigation programs. For those of us on the frontlines of pollution, such policies are non-negotiable. This was true prior to the onset of COVID-19, but given that a Harvard study found that an increase in long-term air pollution exposure (1 $\mu g/m^3$) leads to a COVID-19 death rate that is eight percent above the risk borne by residents of communities without such exposure, addressing these disparities is critical.[6] At minimum, the updated model rule should mandate that the participating states address disparities in air quality impacting environmental justice populations and other pollution hot spots created by regulated power plants. The model rule should direct the states to work with community stakeholders to identify and monitor pollution hotspots and set enforceable air improvement targets. These targets should produce measurably better air quality in impacted communities by 2032.

Accountability

[6] Wu, X., Nethery, R. C., Sabath, M. B., Braun, D. and Dominici, F., 2020. Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis. *Science advances*, *6*, p.eabd4049, https://projects.iq.harvard.edu/covid-pm.

More dedicated outreach and engagement are needed to address the concerns of impacted communities. We remind the participating states that meetings must be held at times (and if in person) in locations that are accessible to EJ and frontline stakeholders, and that two way interpretation must be available for people with limited English proficiency. Written materials should be translated into languages spoken in the community where the meeting is taking place and information should be presented to stakeholders in terms that are meaningful to them. To be truly accountable to our organizations and to EJ and frontline stakeholders, engagement should result in changes to climate policies that address our needs.

To show that RGGI jurisdictions are serious about reckoning with the impacts of racial and environmental justice, RGGI Inc. and the participating states must center the needs of impacted communities and follow through on this commitment, not simply say that they hear EJ voices without sufficiently incorporating our input into the policy. When considering all of the feedback on the model rule, we request that you attribute the same or more weight to comments from overburdened and underserved communities discussing impacts of RGGI on those communities as comments regarding the overall reductions in emissions or the amount of revenue that could be generated by the program.

It is impossible for our communities to engage fully in any regional process if the harm of repeated marginalization and the dismissal of our concerns is not addressed. We call on RGGI Inc., and agency staff in participating states to commit to incorporating our comments as RGGI Third Program Review progresses.

We, the undersigned, will continue to engage in the RGGI Third Program Review process to push for EJ/CJ priorities in the Northeast. We urge that RGGI Inc. incorporate our demands so as to ensure binding commitments from all participating states to prioritize the concerns of EJ/CJ communities throughout the region. As a collective of northeastern EJ/CJ organizations, we are committed to engaging our state agencies to ensure these commitments are achieved collaboratively with community leadership.

Sincerely,

Alternatives for Community & Environment (ACE)

Connecticut Coalition for Environmental Justice (CCEJ)

GreenRoots, Inc.

Institute for Policy Studies

New York City Environmental Justice Alliance (NYC-EJA)

People United for Sustainable Housing Buffalo (PUSH Buffalo)

United Puerto Rican Organization of Sunset Park (UPROSE)